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ABSTRACT

A consent decree which grew out of a court case brought against the New York City Board of Education by Aspira, a Puerto Rican community agency, resulted in many changes in policies affecting the education of children of limited English-speaking ability in New York City schools, particularly during the two years following the signing of the agreement in 1974. This study (1) analyzes the complexity of institutions and forces that were involved in determining language-of-instruction policies and practices in New York city public schools prior to the suit, (2) places within a historical framework the efforts of Aspira and the Puerto Rican Legal Defense and Education Fund (PRLDEF) to change language of instruction policies, (3) reconstructs the issues regarding the education of children of limited English-speaking ability raised during the suit's litigation, and (4) summarizes the impact of the consent decree on specific policies related to the implementation of the bilingual program which was stipulated, including policies regarding minimum educational standards, language assessment and grouping, personnel, finance, and parental rights. (Author/EB)

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A COMMUNITY'S STRUGGLE FOR EQUAL EDUCATIONAL OPPORTUNITY: *ASPIRA* v. *Bd. of Ed.*

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TABLE OF CONTENTS

Introduction 5

Aspira, the Organization 5

The Suit 6

Significance of the Study 6

Chapter I: Selected Factors in Policy Reform 9

Introduction 9

National Language Policy: The Sociohistorical Backdrop 10

Board of Education Policies and Practices Prior to 1972 11

- The Immigrants and the Schools—1790-1940 11
- The Puerto Rican In-migrant to New York Schools—1938-1972 13

An Interest Group's Role: The Puerto Rican Community 20

- The Imposition by the United States of Language and Instruction Policies on the Island 21
- The Community's Failure to Participate in Mainstream Society 22
- The Community's Organizational Life 23
- The Community's Position on Educational Policy Issues 24

The State Role 27

- The State Legislature 27
- The Regents of the University of the State of New York (The Regents) 29
- The Commissioner of Education 30

The Federal Role 32

- The Legislature 33
- The Executive Branch 34

The Role of the Courts 36

Chapter II: History and Substantive Issues of *Aspira* v. *Board of Education of the City of New York* 47

Introduction 47

History of the Suit 47

- An Idea Germinates 47
- Identifying Plaintiffs 48
- The PRLDEF 48
- HEW Office of Civil Rights Advised Against the Suit 48

The Suit: Claims and Arguments 49

- The Suit Is Filed 49
- The Complaint 50
- The Complaint's Request of the Court 50
- Aspira's Strategy to Obtain Equal Educational Opportunity 50
- Beginning of the Interrogation 51
- Board of Education Attempts to Dismiss the Lawsuit 51
- The PRLDEF Opposes the Board's Motion to Dismiss 52
- Board of Education Budget: Cuts Pending for Bilingual Education 53
- Judge Frankel Denies the Board's Motion to Dismiss 53
- Aspira's Right to Request Relief 53
- The Board Formally Answers Aspira's Complaint 53
- Discovery—The Lengthy Process of Preparing for Trial 54
- The Survey Remains a Moot Issue 55

Lau v. *Nichols* 55

- Doubts Led to Critical Moments 56
- Impact of *Lau* on *Aspira* 56

Aspira Moves for Summary Judgment 57

- *Rodriguez* v. *Percell* 57
- Board Requests Judge Delay Decision on Summary Judgment 57
- The Board of Education Opposes Summary Judgment 58
- Aspira and PRLDEF Prepare Tactics 58
- The Question of Finance 59
- An Agreement Between Parties Is Sought—Judge Intervenes to Request Plans 59
- Aspira's Plan 60
- The Board's Plan 61
- Aspira's Reaction to the Board's Plan 62
- The Board Reacts to Aspira's Plan 63
- Judge Pressures Parties to Define Points of Agreement and Dispute 64
- Issues in Dispute 64

An Agreement Is Reached 65

- A Consent Decree Is Drafted But Not Without Conditions and Conflicts 65
- The Program 66
- Reaction to the Suit 67

Chapter III: Policy Determination, 1974-76 71

Introduction 71

- The Analysis of Policy Reform 71

Implementation 1974-76 72

- Issues Unanswered by the Consent Decree 73
- Preparation for Implementation 1974-75 73
- Implementation 1975-76 74

Minimum Educational Standards 76

(continued on next page)

Parental Rights 77
Personnel 80
Attitudes of Interest Groups and Personnel Policies 81
The Impact of the City's Economic Crisis 83
Bilingual Personnel Policies 1974-75 83
Personnel Needs Remain Unmet 87
Policy Determination v. Policy Implementation 87
Testing 88
English and Spanish Testing Controversy 88
Disputes Over Cut-Off Scores 89
The LAB Is Administered 90
August 26, 1975 Ruling 91
Testing Results 92
1975-76 Retesting Controversy 92
Contempt Ruling 92
1976 Data Summary 93
Finance 93
Financing Bilingual Education Prior to the Consent Decree 93
The 1976-77 Prospects 94
The Economic Crisis and Contempt Proceedings 95
Contempt Findings 96
The Federal Government's Position 97
Regrettable Timing 97
Community School Boards Request for Bilingual Education 98
Summary 98

Chapter IV: Conclusions, Remaining Policy Issues, and Policy Recommendations 103

Introduction 103
Conclusions 103
Remaining Policy Issues and Policy Recommendations 104
The Board of Education 104
The Puerto Rican Community 105
The Courts 108
The Federal Government 109

Appendices 111

Sources Cited 119

LIST OF TABLES

1. Number and Percent of Districts and Percentile Range of Spanish-Surnamed American Student Population, New York State: 1971-72 27
2. Districts With Significant SSA Student Populations, New York State: 1971-72 28
3. Extent of Participation in Consent Decree Program by School District: January, 1976 75
4. Percent of Student Participation: Status of Implementation of Consent Decree, Summary–May 1976 76
5. Bilingual License Area and NTE Appointments: 1964-75 83
6. Information Center on Education Ethnic Census 1974-75: Public School Staff by School and District 84
7. Candidates Examined for Licenses in Puerto Rico 84
8. Examinations Given Since the Aspira Consent Decree 85
9. Number of Candidates Filing to Be Examined for Ancillary Certificates as of June 17, 1975 85
10. Candidates Assigned in Bilingual Licenses: October-December 1975 86
11. Reports Submitted by Districts–Comparison of Number of Pupils Eligible for LAB (Spanish Based on LAB-English) Results, 10th % Cut-Off and 20th % Cut-Off 90
12. Proposed Allocation for Bilingual Education Fiscal Year 1974-75 94
13. Summary Table 1974-75: Reimbursable Bilingual Programs, September 10, 1974 95
14. Grand Total of all 1975-76 Bilingual/ESL Reimbursable Programs, March 1976 95
15. Allocation for Bilingual Education Fiscal Year 1975-76 96
16. Summary Table of Grand Totals for 1976-77: Reimbursable Bilingual Programs, November 30, 1976 96
17. Language Ability Survey of Pupils in New York City Public Schools (By Districts) as of October 31, 1972 112
18. Consent Decree Program Eligible Students, Absentees, and Personnel as of June 1975 114
19. Pupil/Teacher Data for Consent Decree Entitled Students as of February 1976 115
20. Summary by District of Consent Decree School and Pupil Data Reports: Population, Testing, and Eligible Pupils, October 1976 116
21. Summary by District of Consent Decree School and Pupil Data Reports: Opt-Outs, Entitled Pupils, Elements of Program Being Received, Personnel, School Data Reported, Corrective Action, October 1976 117
22. Summary of Extent of Student Participation in the Consent Decree Program by District/Division–November 1976 118

A COMMUNITY'S STRUGGLE FOR EQUAL EDUCATIONAL OPPORTUNITY: *ASPIRA* v. *BOARD OF EDUCATION*

Introduction

References for Introduction begin on Page 7

In recent years, policies and practices determining the education of language-minority children[1] and children of limited or no English-speaking ability[2] have been the subject of much debate. Forums for these debates have included schools, communities, halls of legislatures, courts, universities, and educational literature.

The literature abounds with documentation of the under-achievement of these children (children of Spanish-speaking background[3] in particular),[4] proposed program models for their instruction,[5] and methods and materials for improved language instruction.[6] Though the literature is by no means either exhaustive or definitive with regard to even these aspects of performance and instruction, there are a number of areas in which the literature is particularly sparse.

This study addresses the weakness of the research literature in two such areas: (1) the inattention to the historical and sociopolitical framework of the issue of educating children of limited or no English-speaking ability[7] and (2) the absence of studies of more complex matters pertaining to institutional language-of-instruction policy and the process of policy-making[8] and policy change. Specifically, this study will look at the sociopolitical and historical background of policies determining the language of instruction for children of limited English-speaking ability in New York City schools prior to 1972. It also will analyze the impact of a landmark legal agreement on language-of-instruction and related policies between 1974 and 1976. Policies related to language-of-instruction policy that were affected by the agreement and studied here include: minimum educational standards, parental rights, personnel, language assessment and finance.

In 1974 the Board of Education of the City of New York (the Board), which supervises a school district with one of the largest concentrations of language-minority children in the United States, signed a landmark agreement with Aspira of New York (Aspira), a Puerto Rican community agency. The agreement, legally termed a consent decree,[9] was an outgrowth of a suit brought by Aspira and a class of children of limited English-speaking ability: *Aspira of New York, Inc., et al.* v. *Board of Education of the City of New York et al. (Aspira* v. *Board of Education* or *Aspira).*[10] The consent decree required that by 1975 the Board implement a bilingual educational program in every local school district in New York City for "all children whose English language deficiency prevents them from effectively participating in the learning process and who can more effectively participate in Spanish."[11] As a result of this agreement, there have been many changes in policies affecting the education of children of limited English-speaking ability in New York City schools, particularly during the two years following the signing of the consent decree.

This study of *Aspira* v. *Board of Education* (1) analyzes the complexity of institutions and forces that were involved in determining language-of-instruction policies and practices in New York City public schools prior to the suit, (2) places within an historical framework the efforts of two community organizations, Aspira and the Puerto Rican Legal Defense and Education Fund (PRLDEF), to change language-of-instruction policies, (3) reconstructs the issues regarding the education of children of limited English-speaking ability raised during the suit's litigation, and (4) summarizes the impact of the consent decree on specific policies related to the implementation of the bilingual program which was stipulated—including policies regarding minimum educational standards, language assessment and grouping, personnel, finance, and parental rights.

Aspira, the Organization

Aspira, taken from the Spanish word "aspire," is a community agency that has as its goal the social advancement of the Puerto Rican community through the education of its youth. Its focus is on high school retention and college placement and retention—though services that are indirectly associated with these also are provided.[12] Founded in New York in 1961 by Antonia Pantoja and other Puerto Rican leaders concerned about the community's future,[13] the agency's operation originally was made possible by grants from private foundations and corporations.[14] Its services first were offered in one small office in Manhattan and later expanded to four borough offices.[15] In 1968 Aspira of America was founded, thereby establishing affiliated offices in New Jersey, Pennsylvania, Chicago, and San Juan, with central offices in New York City.[16] Today, Aspira's major efforts depend on government funding, though substantial funds are received from private foundations and corporations.[17]

Aspira has provided counseling, tutoring, financial aid, parent workshops, cultural-reinforcement activities, and a wide variety of programs and services for Puerto Rican youths and their families.[18] Through the years, thousands

of Hispanic students have taken advantage of these services. In fact, Aspira has witnessed an increased need and demand for these services.[19]

The Suit

On September 20, 1972, Aspira filed suit against the Board of Education of the City of New York claiming that 182,000 Puerto Rican children of limited or no English-speaking ability enrolled in New York City schools had been denied the right to equal educational opportunity[20] by the Board.[21] The discrimination suffered by the class of children was alleged to have been a function of their ethnicity and language.[22] The Puerto Rican Legal Defense and Education Fund (PRLDEF), attorneys for the plaintiffs, argued that children of limited or no English-speaking ability were precluded from fully participating in the learning process because they were unable to understand their teachers or their texts.[23] The PRLDEF claimed that the Board had failed to provide any or adequate pedagogical programs or services to meet the children's special linguistic and cultural needs.[24] Aspira petitioned the court to order the Board to implement a bilingual educational program,[25] the only program model that Aspira felt adequately addressed the complex educational needs of the class of 182,000 children.

The *Aspira* v. *Board of Education* consent decree, the agreement signed by both parties on August 29, 1974, provided that the Board would: (1) implement the stipulated bilingual education program,[26] (2) identify and classify those children whose English language deficiency prevented them from fully participating in the learning process and who could participate more effectively in Spanish, (3) promulgate a policy of minimum educational standards to all districts and high schools in the school system,[27] and (4) apply its maximum feasible efforts to obtain the necessary numbers of teachers and the funds required to implement the program by September 4, 1975, so as to affect all children entitled to the program as defined by the decree.[28] The consent decree constituted a policy statement; however, the specific policies in areas such as minimum educational standards, personnel, assessment, finance and parental rights were formulated (in some cases after consultation between both parties)[29] during the two-year period following the signing of the consent decree.

Significance of the Study

Inasmuch as even the most conservative figures have placed the number of language-minority children in the United States at over 1.6 million, the dimensions of the educational issues relevant to policies affecting the education of these children are substantial.[30] Adding impetus to the nature and scope of the debate on this policy issue have been developments in the area of law and civil rights, which have included: (1) the 1970 guidelines[31] of the Civil Rights Act of 1964,[32] (2) the 1974 Supreme Court decision in *Lau* v. *Nichols*,[33] and (3) the 1974 court-ordered consent decree resulting from *Aspira* v. *Board of Education*. As a result of these developments, federal policy now requires that hundreds of federally aided school districts throughout the country with substantial numbers of language-minority children[34] implement special educational programs that address their linguistic needs and ensure their full participation in the learning process.[35] Noncompliance with these federal regulations could result in the withdrawal of federal aid.[36]

This study of selected factors related to language-of-instruction policies in New York City schools prior to Aspira and the suit's history and policy impact has the potential of contributing to the field. It offers school systems involved in the process of planning or implementing programs an understanding of the complexity of legal and policy issues related to the educational rights of children of limited English-speaking ability. The study presents a sociopolitical and historical framework within which to place these issues. The study might also suggest to court officials the lack of efficacy of changing school systems through legal imposition of broad-based policies, that delineate the language of instruction for children of limited English-speaking ability, without concomitant changes in other policy areas such as finance, personnel, testing, and grouping.

For community-based interest groups, including parent groups, teacher groups, and social-planning or advocacy groups, the study analyzes the roles played and strategies implemented by Aspira and other community-interest groups in their efforts to use the courts to change educational policies. For potential plaintiffs, including children and their guardians in other cities and states who feel that educational institutions are not complying with their obligation to provide equal educational opportunity, Aspira's experience may offer understandings, alternatives, and precautionary considerations from which to draw.

Finally, an analysis of the policy impact of the suit and the resulting consent decree is important inasmuch as the consent decree has served as a legal precedent and a pedagogical model for court officers, government officials, and community- and educational-interest groups throughout the country. Approximately 80,000 children initially were identified as eligible for the consent decree program.[37] This is one of the country's largest populations of children of limited English-speaking ability under one urban educational jurisdiction.

REFERENCES – INTRODUCTION

[1] The term "language-minority children" includes all children who, as a function of membership in a minority ethnic group whose culture is identified and transmitted by one or more languages, speak a language other than, but not necessarily to the exclusion of, English.

[2] The term "children of limited or no English-speaking ability," as used by the author (and not necessarily in citations from other authorities) includes children whose first language is a language other than English and who speak, read, write, or understand English to a limited extent or not at all.

[3] The term "children of Spanish-speaking background," as used by the author, is a specific yet inclusive term because it refers to a particular language-minority group, yet it is more specific than such terms as "Spanish-speaking," or "Spanish surnamed." Not all Spanish speakers belong to an ethnic minority group. Similarly, not all Spanish surnamed individuals are necessarily of a Spanish-speaking background or ethnic group.

[4] For the most recent national studies see: U. S., Commission on Civil Rights, *Mexican American Study*, 5 vols. (Washington, D. C.: Government Printing Office, April 1971 to March 1974); Idem, *Puerto Ricans in the Continental United States: An Uncertain Future, October 1976* (Washington, D. C.: Government Printing Office, 1976), pp. 92-133.

[5] See: Theodore Andersson and Mildred Boyer, *Bilingual Schooling in the United States*, 2 vols. (Austin, Texas: Southwest Educational Development Laboratories, 1970); and National Puerto Rican Development and Training Institute, "A Proposed Approach to Implement Bilingual Education Programs: Research and Synthesis of Philosophical, Theoretical, and Practical Implications" (New York, 1972). (Mimeographed.)

[6] Comprehensive bibliographies of materials include: Center for Applied Linguistics, *A Bibliography of American Doctoral Dissertations in Linguistics, 1900-1964* (Arlington, Va.: Center for Applied Linguistics, 1968); Idem, *Reference List of Materials for English as a Second Language*, 3 pts. (Arlington, Va.: Center for Applied Linguistics, 1964, 1968, 1969); Idem, *Spanish and English of United States Hispanos: A Critical Annotated Linguistic Bibliography* (Arlington, Va.: Center for Applied Linguistics, 1975); and William F. Mackey, *International Bibliography on Bilingualism*, a computerized selection of over 11,000 titles (Quebec: Les Presses de l' Universite Laval, 1972).

[7] Meyer Weinberg, *Minority Students: A Research Appraisal* (Washington, D. C.: Government Printing Office, 1977), p. 285.

[8] U. S., Department of Health, Education and Welfare, National Institute of Education (NIE), *Multilingual-Bicultural Division: Fiscal Year 1976 Program Plan* (Aspira of New York Files), p. 8.

[9] The term "consent decree" is defined as an agreement "entered by consent of the parties; it is not properly a judicial sentence, but is in the nature of a solemn contract or agreement of the parties, made under the sanction of the court, and in effect an admission by them that the decree is just determination of their rights upon the real facts of the case, if such facts have been proved." *Black's Law Dictionary*, 4th ed., p. 499.

[10] Aspira of New York et al. v. Board of Education of the City of New York et al. 72 Civ. 4002 S.D.N.Y. 1974 (MEF) [hereinafter cited as "Aspira" in footnotes and as "*Aspira*" in the text].

[11] Ibid., Consent Decree at para. 2 (S.D.N.Y. August 29, 1974) (unreported) [hereinafter cited as Aspira, Consent Decree].

[12] Aspira of New York, "Annual Report," New York, Aspira of New York, 1965, p. 3.

[13] Ibid., p. 1.

[14] Ibid., p. 10.

[15] Ibid.

[16] Aspira, Inc., "Decade of Achievement: Aspira 10th Anniversary," New York, 1971, p. 10.

[17] Aspira of America, "Annual Report 1974-75," New York, 1976, pp. 20-28.

[18] Though programs and services are designed expressly for Puerto Ricans, any youth requesting services is helped by the agency.

[19] Aspira of New York, "Annual Report 1974-75," New York, Aspira of New York, 1976, p. 7.

[20] Complaint at para. 1, 72 Civ. 4002 (S.D.N.Y. September 20, 1972) [hereinafter cited as Aspira, Complaint].

[21] The suit was initially filed by thirteen individually named children and their guardians against authorities of their respective local school boards and the Central Board of Education of New York City. A motion later was filed which instituted the class action against the Central Board and all community school boards in New York City.

[22] Aspira, Complaint at para. 2. The "class of children" refers to those children similarly situated to the individually named plaintiffs. Ibid., at para. 4-9.

[23] Ibid., at para. 37.

[24] Ibid., at para. 2.

[25] Ibid., at para. 66. The term "bilingual education" as defined by *Bilingual Education Act of 1967, Statutes at Large* 81, sec. 703 (1968), *U.S. Code*, vol. 20, sec. 880b (1968) is "the use of two languages of instruction." Aspira later defined bilingual education as "a program of instruction which utilizes two languages in the curriculum which contains all four of the following components: (1) first language is reinforced and developed; (2) curriculum content areas are taught in a language the child fully comprehends; (3) English as a second language is taught in a sequentially structured program; (4) Puerto Rican culture is taught and reflected in all aspects of the curriculum." Plaintiffs' Memorandum of Law at 3-16, 72 Civ. 4002 (S.D.N.Y. May 20, 1974) (unreported Memorandum).

[26] Aspira, Consent Decree at para. 2.

[27] Ibid., at para. 1.

[28] Ibid., at para. 7, 10.

[29] Ibid., at para. 11, which required that the Board "consult with plaintiffs with respect to the development and implementation of all items contained in the Consent Decree." The term "consultation" is, of course, a vague one and difficulties and limitations of Aspira's exercising this prerogative are discussed in chapter 3 of this study.

[30] NIE, *Program Plan*, p. 3.

[31] J. Stanley Pottinger, Director, Office of Civil Rights, Department of Health, Education and Welfare, Memorandum to School Districts with More Than Five Percent National Origin–Minority Group Children, Subject: Identification of Discrimination and Denial of Services on the Basis of National Origin, Washington, D. C., 25 May 1970, in *Federal Register*, vol. 35, p. 11595.

[32] *The Civil Rights Act of 1964*, Title VI, *Statutes at Large* 68, sec. 252 (1964), U.S. Code, vol. 42, sec. 2000d (1970).

[33] Lau v. Nichols, 414 U.S. 563 (1974) [hereinafter referred to as "Lau" in footnotes and "*Lau*" in the text].

[34] Pottinger, Memorandum, 25 May 1970, was directed to "School Districts with More Than Five Percent National Origin–Minority Group Children."

[35] J. Stanley Pottinger, Summary in Lieu of Testimony, in U.S., Commission on Civil Rights, *Hearing: New York, February 14-15, 1972* (Washington, D. C.: Government Printing Office #0500-00083, 1972), pp. 725-37.

[36] *Title VI of the Civil Rights Act of 1964, Statutes at Large* 68, sec. 252 (1964), *U.S. Code*, vol. 42, sec. 2000d-1 (1970).

[37] The remainder of the original class of 182,000 children were not found to be entitled to the consent decree program.

CHAPTER I: SELECTED FACTORS IN POLICY REFORM

References for Chapter I begin on Page 37

Introduction

National and local public educational policies determining the language of instruction in American schools have become an issue of renewed interest. In fact, many changes have taken place in the past ten years. Yet, recently there has been reaction to what has been viewed as a "dramatic" departure from tradition. Two court cases that have received particular national attention are the Supreme Court ruling in *Lau* v. *Nichols*[1] and the court-ordered agreement in *Aspira* v. *Board of Education*.[2]

In 1974, the United States Supreme Court ruled in *Lau*, a case brought by a class of 1,800 Chinese children against the San Francisco school district, that federally aided school districts that did not provide for the language needs of children of limited or no English-speaking ability were denying these children their rights under Title VI of the Civil Rights Act of 1964[3] and its promulgated regulations.[4] Subsequent to this decision, the Board of Education of the City of New York, which supervises the largest urban school system in the country, with the largest population of children of Spanish-speaking backgrounds, entered a court-ordered agreement with Aspira of New York and the class of children plaintiffs.[5] The consent decree[6] stipulated that a broad-based bilingual instructional program[7] would be provided to children of limited English-speaking ability who the court determined were entitled to the program.

Lau, Aspira, and the intervention of the courts would seem to defy current educational policy-making theory, which suggests that changing policies is highly political, involving the dynamic interaction of many social interests and forces at all levels of government and society.[8]

In addition to the impetus these court decisions may have added to the policy change process, this study will document factors pivotal to these decisions operating to set the stage many years prior to the litigation, though most significantly during the decade which preceded it. Key socioeconomic, historic, and political factors in the policy-making process are identified. This thesis is supported first from a national sociohistorical perspective of language policy in the United States. Board of Education policies and practices for educating children of limited or no English-speaking ability prior to 1972 are summarized. Particular emphasis is given to the educational experience of Puerto Rican children because *Aspira* was brought on their behalf. The Puerto Rican community's experience on the island of Puerto Rico and, in particular, its mainland experience are reviewed, highlighting its organizational life in terms of interest groups and their positions on educational issues. The study then looks at various institutions on the state and federal levels of government, their policies with regard to educating language-minority children, and their subsequent influence on the Board and the community. Finally, the study looks at the role the courts have played in bringing about policy change in New York City schools.

The importance of viewing policy change within a historical perspective has been supported by Diane Ravitch in her impressive history of the New York City schools, *The Great School Wars*. With regard to other major issues with which the schools grappled, she concluded:

> Each major reorganization of the school system was the result of intense political struggle and each of these battles coincided with a huge wave of new immigration. Though the issues in each instance were different, the public school was the battleground where the aspirations of the newcomers and the fears of the native population met and clashed.[9]

The importance of the role of community, political, and other interest groups in the policy-making process is supported by John Thomas Thompson among others.[10] Thompson stresses the need to cease viewing the policy-making process according to traditional organizational theory, which conceives of organizations as hierarchical arrangements of workers who carry out policies made by the legally constituted powers, particularly the local school board. Today, he suggests, public educational policy-making is recognized as a more complex and political process.[11] Unfortunately, no definitive model exists for the study of the policy-making process.

Support for the thesis that the roots of public educational policy change lie outside the schools is provided by Arnold Leibowitz's study of American politics and its influence on public educational policies with respect to German-Americans, Japanese-Americans, Mexican-Americans, Puerto Rican-Americans, and American Indians. In *Educational Policy and Political Acceptance,*[12] he investigated the reasons behind the English-only policy and subsequent revisions of that policy.[13] With regard to national language policy, he concluded:

> Superimposed upon this long-range policy question are a myriad of short-range economic and social interests which affect local attitudes toward the group and its most obvious symbol of its apartness: its language. Public officials in attempting to balance these varying interests and emotions have been caught in a series of painful decisions as they have directed and redirected policies with respect to the enforcement of English in various aspects of American life.
>
> The difficulties have been most clearly seen in the school system, where the question of the use of English as the

> language of instruction to the exclusion of other languages has been a constant issue.[14]

The following chapter will document, within a sociohistorical and political framework, the key factors, interest groups, and individuals playing a role in the policy change process that resulted in *Aspira*.

National Language Policy: The Sociohistorical Backdrop

This section will view public educational policy change within the backdrop of the sociohistorical, economic, and political experience of the United States.[15] Subsequent sections of this chapter will look at the twentieth century New York City experience of the Puerto Rican in-migration and highlight the role which the community, different levels of government, and other interest groups played in changing public educational policies and in the development of *Aspira*.

In America, policies regarding language have affected many aspects of daily life. Leibowitz suggests that language policy has been viewed as a natural function of government.[16] In fact, every federal government—and the United States is no exception—has been concerned with balancing the role that a non-national mother tongue plays for its citizenry.[17]

Other aspects of American life affected by language policy were reviewed by Joshua A. Fishman in *Language Loyalty in America*.[18] Fishman's comprehensive studies have encompassed the eighteenth, nineteenth, and twentieth centuries. A progressive work for its time, it documents the struggle of many language minorities in the United States to maintain their native language.[19] Though national and local language policies have affected other important aspects of life,[20] Fishman, Leibowitz, and others[21] maintain that the schools have been the focal point of a large part of the controversy.

With regard to policies determining the language of instruction in the nation's schools, Leibowitz concludes that they were never the sole outgrowth of what was determined to be the most effective method for educating children nor did "the decision have to do with the willingness of the non-English-speaking group to learn English."[22] Rather, policies in accepting or rejecting instruction in the minority's language have depended to a great extent on the economic and political environment of the time.[23] Furthermore,

> official acceptance or rejection of bilingualism in American schools is dependent upon whether the group involved is considered politically and socially acceptable. The decisions to impose English as the exclusive language of instruction in the schools have reflected the popular attitudes toward the particular ethnic group and the degree of hostility evidenced toward that group's natural development. If the group is in some way (usually because of race, culture, color, or religion) viewed as irreconcilably alien to the prevailing concept of American culture, the United States has imposed harsh restrictions on its language practices; if not viewed, study in the native language has gone largely unquestioned or even encouraged.[24]

In the eighteenth century, when schools were financed by private funds, they were, to a large extent, bilingual. In fact, during this period, school instruction throughout Pennsylvania, Maryland, Virginia, and the Carolinas was given in German, often to the exclusion of English.[25] The nineteenth century also brought the public school movement, a trend documented by Lawrence A. Cremin in *The American Common School: A Historic Conception*.[26, 27]

Andersson and Boyer divided both nineteenth and twentieth century public and private (chiefly parochial) school practices with regard to the language of instruction into two phases. These reflect changing immigrant and economic factors. In phase one, 1839 to 1880, German was the only non-English language admitted as the medium of teaching in public elementary schools (except for French in Louisiana and, from 1848, Spanish in New Mexico). In terms of its political ramifications, it is important to note here that both Louisiana and New Mexico were colonized territories of other than English-speaking nations. In terms of political expediency and the initial "governability" of these territories permitting the use of the native language was probably the more expedient alternative.[28] Between 1854 and 1877, as documented by Fishman, German-Americans brought about legislation permitting or mandating bilingual education in at least six states.

After 1870, however, the source of immigation to the United States began to shift. Previously, most immigrants came from England, Ireland, and Germany. In reaction to changing economic and political conditions in Europe, the numbers of immigrants from these countries began to decrease, while those from southern and eastern Europe began to increase. By the last decade of the nineteenth century, this "new" immigration accounted for more than half of all immigrants to the United States.

The nineteenth century American public school movement did not encourage the preservation of languages other than English.[29] Many state statutes expressly forbade instruction in any language other than English.[30] Andersson and Boyer similarly document changing practices during what they term phase two of education, the years 1880 to 1917. In this period there were German-English bilingual schools in Cincinnati; Indianapolis; Baltimore; New Ulm, Minnesota; and a number of rural areas. In other schools during this period German was taught as a subject but not used as a medium of instruction. In addition, Norwegian, Czech, Italian, Polish, and Dutch occasionally were taught but were not used as teaching mediums. According to Andersson and Boyer, before 1800, German schools flourished. French schools in New England as well as Scandinavian and Dutch schools in the Midwest were begun. Many of these schools were not actually bilingual in their curricula; they were non-English schools where English was taught as a subject. After 1800, French and Scandinavian paro-

chial schools flourished as did parochial schools for Catholic newcomers from eastern and southern Europe—Poles, Lithuanians, and Slovaks, multiplied.

With the opening of the twentieth century European immigration to the United States rose sharply. Whereas immigration had averaged fewer than 500,000 people annually in the first fifteen years of the century, the number of immigrants exceeded 800,000 by 1903 and hovered around 1,000,000 in each of the next ten years. However, it was not numbers alone that aroused hostility toward continued immigration, but the fact that by the turn of the century, the "new" immigration—from southern and eastern Europe—began to be greater than the old immigration—the Teutons and the Anglo-Saxons from northern Europe.[31] Of some 13,000,000 immigrants to the United States in the years from 1897 to 1914, fully 10,000,000 were from southern and eastern Europe.[32]

Prejudice against the new immigration was so intense and widespread that Congress reacted first by investigating the immigrant experience and then, in 1924, adopting restrictive legislation, which virtually closed the nation's doors. Future immigration was tied to a quota system based on the national census of 1890, a sure way of keeping out those national groups that had arrived in great numbers between 1890 and 1915. Oscar Handlin suggests that the political coalition that wanted to halt the influx from southern and eastern Europe was composed of Catholics, anti-Semites, and the organized labor movement; he notes that each group had its own reasons, but together they achieved their common goal.[33]

In "The Children of Immigrants in the Schools: Historical Analogues of Educational Deprivation," Francesco Cordasco draws inferences regarding the American national character of the time from an investigation of the reports and hearings of the Immigration Commission convened by Congress in 1907. He highlights the fears and assimilationist leanings of the times. As an example, he summarizes a conclusion of the 1911 *Report on the Children of Immigrants in Schools:*

> Although the Immigration Commission concluded that the "races" which had most recently arrived in the United States (and in which a foreign language was used in the home) had a higher percentage of retardation, it cautioned against deriving from these data less mental ability, but rather ascribed the retardation to environmental and external circumstances that would be corrected within a generation.[34]

The national study on immigrants and the resulting law served to confirm assimilation as the national policy. Cubberly states that "although there was little agreement as to what Americanization was, the schools were committed to Americanize (and to Anglicize) their charges."[35] In the schools, assimilation as a national policy ostensibly meant the repudiation of the native culture and language which the children of immigrants brought to American schools.[36] In this regard, Leonard Covello states:

> The concept of Americanization was based upon the assumption that foreigners and foreign ideas and ways were a threat to American political, economic, social stability and security. The infiltration of foreign culture, it was feared, would eventually bring about a deterioration of the American "way of life." Programs were designed, therefore, to suppress or eliminate all that was conceived of as "foreign" and to impose upon the immigrant a cultural uniformity with the American pattern.[37]

The twentieth century brought World War I. With the war came anti-German as well as general anti-foreign sentiments and an end to national permissiveness regarding instruction in languages other than English—particularly bilingual education. Resulting legislation permitted only English as the language of instruction in American public schools. This was reflected in the legislation of thirty-five states that in 1971 still had English-only instruction laws.[38]

Board of Education Policies and Practices Prior to 1972

The experience of the Puerto Rican in-migrant to the continental United States echoed the experience of groups that arrived here as immigrants.[39] A report prepared in 1949 noted:

> Although the Jones Act of 1917 made Puerto Ricans citizens of the United States, the Puerto Rican migrant who arrives in New York City is faced with problems very similar to those that were encountered by our foreign immigrant forbears when they arrived in New York harbor.[40]

A second report prepared by an Association of Assistant Superintendents affirmed:

> There is no doubt but that many pupils coming from Puerto Rico suffer from the double handicaps of unfamiliarity with the English language and lack of previous educational experience, sometimes approaching complete illiteracy. Malnutrition and other health deficiencies contribute to the educational problems of the schools. The overcrowding at home and the restlessness of the street carry over into the school in the form of nervousness, extreme shyness, near tantrums, and other behavior characteristics which are the more difficult for the teacher to understand because of the language barrier.[41]

The Immigrants and the Schools – 1790-1940

Prior to 1880

In the period of great migrations to the United States, the children of immigrants found American schools inhospitable and largely alien. Every major wave of immigration—German, Irish, Italian, Jewish—and similarly every surge of in-migration—black, Puerto Rican, Mexican—witnessed the same scenario. In each instance, the cultural clash of the old and the new affected American life and was reflected in the schools.[42] Diane Ravitch's historical perspective of New York City schools views each major reorganization of the schools—"school wars"—as the result of intense political struggle coinciding

with a huge new wave of immigration. She poignantly places the educational experience of New York City's children within a sociohistorical perspective, highlighting the reality of group interest, conflicts, and expectations in terms of the school.

> There is no more constant theme in the unfolding of New York City's history than the reciprocal relationship between the native and the immigrant: the immigrant arrives poor, lives in crowded slums with others like himself, suffers discrimination and terrible living conditions, and (as a group) produces a disproportionate number of criminals and paupers; the native blames the immigrant for bringing crime, poverty, and slums to the city, discriminates against him, and wonders whether this particular group can be assimilated into American society.[43]

Nathan Glazer and Patrick Moynihan's *Beyond the Melting Pot: The Negroes, Puerto Ricans, Jews, Italians and Irish of New York City* and Oscar Handlin's *The Newcomers: Negroes and Puerto Ricans in a Changing Metropolis* offer comprehensive studies of the history and experience of the immigrants and in-migrants of New York City. Handlin suggests that New York has from its inception, as a colonial marketplace of the seventeenth century, always maintained its diverse ethnic character. Similarly, New Yorkers of the early nineteenth century, "like many troubled New Yorkers in the next one hundred and forty years . . . could not understand how the newcomers could 'be suddenly identified with ourselves and our children.' "[44]

Though Handlin claims that slum areas began to develop in New York City as early as the 1790s, and though the town of New York had not yet experienced any large-scale immigration, native New Yorkers already associated immigration with crime and poverty. In 1808 the City Hall was built,[45] and in 1806 the first public school was established in an apartment on what is now Madison Street.[46] A decade later, New York City "had been engulfed by a massive increase of its population. Neither the supply of housing nor of municipal services could keep up with this rapid growth."[47]

The "New" Immigration

Handlin suggests that New York became the "Empire City" between 1820 and 1870, a period that witnessed tremendous growth in both commerce and population, and he argues that one was certainly dependent on the other. "By 1870 there were more than 400,000 foreign born in the city, well over 44 percent of its inhabitants."[48] In the fifty-year period that followed, the largest component of the city's population growth continued to be European immigrants. The number of foreign born who settled in New York reached its peak in 1907; in that year alone 200,000 immigrated to the city.[49] Prior to 1870, most immigrants had come from England, Ireland, and Germany. After 1870, however, the source of immigration began to shift. Italians and eastern European Jews began to predominate in the "new" immigration. The newcomers moved into slums, thereby shaking the complacency of the more comfortable New Yorkers. Immigrants were often blamed for their poverty and for the urban squalor caused by overcrowding. Although the city continued its economic growth, the new immigrants were spurned. Immigration was halted by the forces of racism and xenophobia that mounted after World War I. These forces resulted in restrictive laws, beginning in 1917 with the voting literacy law and followed by immigration restriction laws between 1921 and 1924. The latter established quotas that largely restricted immigration.[50]

Ravitch and others depict the experience of the children of immigrants. She relates that thousands of children were turned away from overcrowded schools, permitting them to join a small army of juvenile vagrants in the city, while laborers endured working twelve-hour days. The slum schools, decrepit and dangerous in physical design, were equally austere in curricular design. Students sat and memorized facts, rules, and definitions in grade-school classes numbering eighty-seven pupils per teacher.[51]

In spite of efforts to improve the living conditions of immigrants, ". . . the slums of New York grew in position and intensified in misery during the last decades of the nineteenth century."[52] By 1890, New York's 1,500,000 people included 43 percent who were foreign born.[53]

In 1880, a movement of reform came to life. It gave rise to settlement houses and Teachers College, which hoped to amend and augment public-school programs. In 1896, Mayor Strong signed a bill in law which centralized the city schools;[54] educators hailed the move as the initiation of "new" or "progressive" education in the city. In *The Transformation of the Schools,* Lawrence Cremin depicts the cause as a many-sided humanitarian effort to apply the American dream to the new urban schools. It was "American Progressivism writ large."[55] The conception of the school's function was broadened in nontraditional ways to include improving the lives of individuals. This meant that schools began to participate and contribute in the areas of health, vocation, family, and community life. The new concept of the school included tailoring instruction to the different kinds of children brought within its purview and changing the meaning of education to stem the tide of school desertion; even at that time, youngsters were dropping out.[56] The principle that "culture could be democratized without being vulgarized" was implied in progressivism.[57]

The composition of the schools began to change radically as rates of immigration soared. Beginning in 1885, the number of immigrants began to increase until, in 1903, immigrants began to enter the United States at the rate of 1,000,000 per year.[58] Schools reflected the residential patterns assumed by the immigrants; ten school districts, for example, were found to be 99 percent Jewish.[59] When the Board proposed shifting 1,500 to the West Side, 2,000 irate parents turned out in protest.

In 1904, the *New York Times* found the children in the city schools "dull." Twenty-five to 50 percent of the

pupils were two to six years too old for their classes.[60] In 1905 reporters noted:

> With classes numbering from thirty-five to seventy, the teacher is obliged to rush on without a single halt. She can not turn back for a second to help a straggler. . . . The system makes the backward children.[61]

In New York City, it became fashionable at the beginning of the twentieth century to compare ethnic groups by intelligence tests or by school-retardation rates. A 1908 analysis of fifteen New York elementary schools showed that German pupils had the least "retardation" (16 percent);[62] followed by American-born children (19 percent); Russians, largely Jewish in origin (23 percent); English (24 percent); Irish (29 percent); and Italians (36 percent). Another study in 1911 classed ethnic groups according to the proportion of pupils who graduated from high school. The rank order was: Italians (0 percent), Irish (1 percent), native whites (10 percent), British (10.8 percent) Germans (15 percent), and Russians (16 percent). The groups that had the least success in New York's public schools at the time were the Italians, who were not only recent arrivals but also had limited or no English-speaking ability, and the Irish, who spoke English and were part of an earlier immigration.[63] School officials in New York blamed educational retardation on a variety of factors: language problems, physical and mental handicaps, late enrollment in school, part-time schooling, large classes, homes where English was spoken haltingly or not at all, the strain of after-school employment, and the effect of poverty on family and community life.[64]

Some sociologists have premised the ability of immigrant groups to assimilate on cultural factors, including the group's rural or urban background and the group's culturally rooted attitudes and motivations in terms of schooling.[65] Others underscored the school's role in shaping lives; the first City Superintendent, William Henry Maxwell, saw the schools as a "moral antiseptic" and as a "ladder 'from the gutter to the University.' "[66] The schools were expected to assume responsibility in place of the family, which Maxwell deemed incompetent, and of the community, which was considered to have disintegrated.[67] In keeping with Maxwell's conception of education, the schools made efforts to "meet the needs" of all the children, diversifying their programs to include manual, vocational, and industrial training courses. There were special courses for the mentally defective, crippled, anemic, and other handicapped children.[68] But the school war which attended the massive arrival of eastern Europeans was motivated by more than just the wish for educational reform:

> The reformers were white Protestants reasserting their dominance over the city's educational system, seeking to shape the rude immigrant masses in their own image. In the pursuit of assimilation and Americanization, alien languages and cultures were disregarded, even disparaged.[69]

The programs devised by Julia Richman represent some of the first evidence of attempts by the schools to respond systematically to the problems of teaching children of limited or no English-speaking ability. She and other district superintendents "experimented with a syllabus of instruction for teaching English to children who did not know the language."[70]

The United States Immigration Commission conducted a national survey in 1911 to chart the progress of immigrant children in the schools. A high incidence of below-standard performance among the children of language-minority groups in the nation's schools was found; the children of immigrants in the New York City schools were not excepted.[71]

By the 1940s, the city's schools were populated by second- and third-generation children of European ancestry. The schools had not conquered the problems of the first-generation immigrant pupils. Rather it had survived them. Not realizing this, educators imagined that the schools were at the top of an evolutionary spiral of social progress, since the crises associated with immigrant absorption lay in the past.[72] It came as a rude surprise, therefore, when a new immigration—or rather inmigration, flooded the city and the schools.[73]

The Puerto Rican In-migrant to New York Schools – 1938-1972

In the first comprehensive study of the experience of Puerto Rican people in the continental United States as early as 1938, the difficulties of the children were graphically noted. The following passage illustrates the natives' dilemma concerning the new arrivals:

> Many Puerto Rican children who enter the public school in New York speak or understand little English. The children are . . . usually put back in their classes . . . two or three years . . . Americans who are teaching Puerto Rican children express the opinion that these children have had less training in discipline and in group cooperation than American children. One large agency . . . which has dealt with Puerto Rican children for many years reported that under proper conditions Puerto Rican children are responsive, easily managed, and affectionate. In contrast to this, another large institution said that for some reason which they could not explain the Puerto Rican children were more destructive than any group of children. . . .[74]

In 1947, the Association of Assistant Superintendents reported their first contact with Puerto Rican children in this way:

> For years, boys and girls from Puerto Rico have entered the public schools of New York City. For the most part they came into Spanish Harlem, arriving in such small numbers that their admission to school was accepted routinely. Together with other non-English-speaking children from European countries, they were placed in "C" classes and gradually assimilated into the regular program of the school. There was no reference to a "Puerto Rican problem" in the schools.[75]

The Board recently traced its earliest response to immigrant and in-migrant children in a memorandum submitted by the chancellor. It states:

> Public school education programs for children from non-English-speaking homes have undergone a steady evolution since the end of World War II. The "melting pot" approach that prevailed before the war and aimed at assimilating the children of immigrants from many different ethnic, linguistic and cultural backgrounds has given way to newer approaches that seek to preserve the pupils' native language and culture by building on existing language skills. . . . These changes came about largely under the impact of the extensive postwar migration from Puerto Rico to New York City.[76]

1938-1953 Prior to The Puerto Rican Study

In-migration from Puerto Rico always has been an index of economic change. Recession is felt earlier in the more fragile and sensitive island economy than the continental United States.[77] Francesco Cordasco explains that "any economic recession or contraction graphically shows in the migration statistics of Puerto Rico."[78]

In the period following World War II, war industries dwindled as a source of livelihood in Puerto Rico. Also, many Puerto Rican servicemen, having had a boot camp view of the United States, decided to bring their families to the mainland after the war.

The trickle of Puerto Rican in-migration to the continental United States swelled after World War II. In fact, the five-year period following the war and then the 1950s brought most of the 900,000 Puerto Ricans reported living on the continent in 1960. Seventy percent of these in-migrants "crowded" the ghettos—called "barrios"—of New York City.[79] Of the 629,430 Puerto Ricans in New York in 1960, only 2.4 percent of those over twenty-five years of age were second generation residents. In 1953, the Board reported 40,000 non-English-speaking students, compared to only 8,828 just five years earlier.[80] Demographers reported that:

> Although the migration statistics are crude and the evidence is limited, they lead consistently to the conclusion that persons of Puerto Rican parentage living in the New York SMSA [Standard Metropolitan Statistical Area] are in large part survivors from the 1950 New York City population.[81]

This is significant because the second or third generation Puerto Rican, who consistently tests below members of other ethnic groups in the city, is actually a product of the New York City school system.

In 1949, Emilio Guerra attempted to place the problem of Puerto Rican students into perspective by relating the problems to the nature of the responses made by the school to them. In reviewing the schools' programs, one procedure employed was to "mainstream" children of limited English-speaking ability, that is, to place them in English-speaking classes. In these classes students were often paired with somewhat senior Puerto Rican "big brothers," who would try, to the extent of their own abilities, to channel the newcomers through the complexities of language and school organization; this was the "buddy system." If, however, it was judged that students should be segregated, they were placed in "C" classes. The "C" classes were specifically for non-English-speaking children age nine to twelve. It was a system of grouping children with major emphasis on basic English instruction. In their non-academic activities, the in-migrant pupils were given the opportunity to mix with other classes. When they were judged ready,[82] the students were transferred from the "C" classes to the regular track.[83] Guerra observed that students placed in regular classes were taken out of class for two periods of intensive study of English daily;[84] each English teacher had three groups of pupils graded according to speaking ability.

The Committee of the Association of Assistant Superintendents recommended that the major functions of Spanish-speaking teachers were to explain the school program to pupils and their parents, to describe the geography and history of New York City, and to provide nutritional and other advice to students and staff. It suggested that teachers who are "expert interpreters of Spanish" should be assigned to assist during registration; it did not recommend that they be placed in the classroom.[85] The Mayor's Committee report of 1951 confirmed that the status of the Spanish-speaking teacher was that of a nonteaching auxiliary:

> The Elementary Division [of the Board of Education] has appointed a group of 10 Puerto Rican teachers (Substitute Auxiliary Teachers) to schools having the largest concentration of Puerto Ricans . . . to assist in the orientation of these children [and to] serve as liaison between the school and the community.[86]

It is interesting to note that of the teachers in schools with more than 26 percent Puerto Rican pupil populations only 5 percent of the teachers claimed any skill in Spanish.[87]

Benjamin Franklin High School, which had the largest concentration of Puerto Rican students in the city, developed the orientation class, on the theory that this would ease student adjustment with the least stress.[88] It was reasoned that by preserving the customs, traditions, and language of the student in the orientation class, the student would make the transition to a regular track more comfortably. Some of the subjects treated in the orientation class were: the organization of the high school and its regulations, the functions of key personnel, and a description of extracurricular activities. Students were advised in the selection of their courses of study, informed about college requirements, and shown how to study and use resources properly. Also included in the orientation program were vocational guidance, description of procedures for obtaining working papers, and orientation to the immediate school and city environment. Part of each lesson was devoted to the reading of an easy Spanish text; these selections served as a basis for free discussion and composition.[89]

Another aspect of orientation class was the "Club Borinquen" and the Puerto Rican Parents Association. Besides being enrolled in orientation, the new arrival was also scheduled for a special English class. He spent the remainder of his programmed time, which included

subject-area instruction in regular monolingual classroom settings. The English language was the only medium of instruction. He was precluded from participating in the major part of the school day because instruction in other subject areas was given in English—a language he could not comprehend. The expectation of school officials was that surrounding or "immersing" the child in English would expedite his learning the language.[90] Presumably, he would learn English (including reading and writing) from other children. School officials were quite ready to defer the child's education or continue to allow his lack of access to the material until he had learned English. In fact, the Mayor's Committee report suggested that "all formal learning should be deferred until the child feels secure."[91] Mary Jenkins concluded that as a result of these Board of Education policies, "Over the years, non-English-speaking children sat in New York City classrooms waiting to learn English so that they could then learn other subjects."[92]

The process of evaluation at Benjamin Franklin High School was described by the Assistant Superintendents' report: "With his dignity and prestige assured," because he remained in the Spanish-speaking environment of the orientation class, the pupil was asked to fill out a questionnaire in Spanish. With this tool, the teacher attempted to determine the student's previous educational experience and his home background. A nonverbal intelligence test and an achievement test in Spanish followed and were used to determine literacy in Spanish.[93]

The foremost suggestions of the Committee of the Association of Assistant Superintendents were: (1) provision of better teacher-student ratios; (2) differentials in class size in schools with high concentrations of non-English-speaking children of Spanish origin; (3) differentials for book allotments; (4) studies with the aim of developing new materials and methods; (5) special medical services; (6) assignment of interpreters during registration (SAT); and (7) efforts to divert the stream of immigration to other areas of the country, through education of Puerto Ricans on the island regarding the realities of New York City life. It concluded that "primarily, it is the language difficulty which differentiates the Puerto Rican pupil from his classmates."[94]

By 1951, the Puerto Rican in-migrant had begun to venture outside "el barrio" East Harlem and establishing new "barrios" in the Lower Bronx, Northwestern Manhattan, South Brooklyn, and elsewhere.[95] The Puerto Rican's difficulties, however, were not alleviated by the addition of new environments. His hardships were compounded by the problems he brought with him as a result of his schooling on the island, as Guerra explained:

> Another obstacle for the Puerto Rican migrant to overcome is his lack of adequate previous educational preparation. . . . During the academic year 1944-1945, 46.9 percent of the children of school age in Puerto Rico were not in school. Of the hundred children who entered school, fifty-two percent left school from the first to the third grade. Thus, of each hundred children, fifty-two had about a year and a half or less of instruction.[96]

Guerra projected that illiteracy would increase in Puerto Rico because of the number of pupils not in school each year. He estimated that 51 percent of students in urban areas and 59 percent of rural pupils were over-age for their grade. He attributed this, in part, to the failure of the Puerto Rican school system to regularize teacher accreditation and school staffing.[97]

In the Mayor's Committee report, the pattern of deprivation of Puerto Rican students began to emerge from a maze of ungathered information—despite the serious lack of much relevant data. It sketched a worsening picture of the education of the immigrant, in-migrant, and the "language-handicapped" child: (1) there were no places for 40 percent of children eligible for kindergarten; (2) sixty of seventy-five schools showed totally inadequate medical and heating facilities; (3) there were attendance problems, although the report did not describe the nature or numbers of students involved.

The committee found an "urgent need" for: (1) the appointment of Spanish-speaking teachers; (2) expediting licensing procedures and special exams for teachers with a knowledge of Spanish; (3)disseminating information about Puerto Ricans throughout the system; (4) devising curricular materials expressly for the new group.[98] Among the committee's other recommendations were: (1) utilizing the children's background in teaching; (2) intensifying health care; (3) using refined tests and measurement devices; (4) increasing guidance services; and (5) providing all-day care for children of working mothers to ensure the health of the youngsters and to eliminate "any incipient juvenile delinquency."[99]

With regard to class placement of Puerto Rican students, the Mayor's Committee advised that age, social maturity, and physical appearance should be taken into account. A child who was very small due to nutritional deficiency, it counseled, should be placed in a lower grade. Previous schooling was to be considered in placement, too. The committee advised that Spanish-speaking students should be placed with other children of the same language background. For students below the third grade, or where there were no "C" classes, it advised that these students be segregated until they showed ability to adjust to a regular class.[100] While the Mayor's Committee held that eleven- and twelve-year-old new arrivals should be kept at the elementary level, another report advocated that fifteen- and sixteen-year-olds be sent directly to high school with restrictions.[101]

A 1953 doctoral dissertation provided some of the earliest of the limited available evidence of Board practices in educating Puerto Rican immigrant pupils prior to *The Puerto Rican Study*. The author of the dissertation, Frank Mayans, Jr., confirmed that the Board favored the segregation of pupils into special receiving or "vestibule" classes to ease the migrant into the stream of life.[102] Also in 1953, a review of recommendations made by educational authorities was published. It is noteworthy that two of the sources cited describe the educational requirements of the Puerto Rican people in purely utilitarian terms.[103]

The Puerto Rican Study

In 1953, the Board of Education undertook a major research project in joint sponsorship with the Fund for the Advancement of Education. Four years and $1 million later, the findings were published as *The Puerto Rican Study*.[104] Since there was no determined methodology for teaching English as a second language (ESL) at the time, the Board undertook this study to attempt to provide educational services for the 40,000 non-English-speaking Puerto Rican students in the schools. The city schools' intermittent attempts were not educating the majority of Puerto Rican in-migrants effectively. New York City Puerto Rican students consistently have attained the lowest level of formal education of any identifiable ethnic or racial group; a fact established and regularly documented by research.[105] The Board employed various techniques in its attempts to educate Puerto Rican children, but most of these were in the realm of classroom management procedures. There is no evidence that teachers were trained to implement sound, systematic pedagogical theory or particular instructional methods for teaching either Puerto Ricans or other in-migrant or immigrant groups that preceded them.[106]

One broad-based policy very much in evidence prior to 1940 was that "only English" was to be spoken in the classroom.[107] However, without specific policies affecting future decisions, the New York City school system was unprepared for the consequences of a geometrically proliferating influx of in-migrant children in the 1940s. Just five years earlier, there had been only 8,828 "non-English-speaking" Puerto Rican students in New York City.[108] In response to the growing number of students in need of special language instructions and as a consequence of the lack of consistent methodology, an ambitious research project was conceived.

The Puerto Rican Study addressed, at least in part, the four basic issues designated as necessary for compliance with the 1954 *Brown* v. *Board of Education* decision: (1) the total number of children of school age and their ethnicity, (2) the total number of children enrolled in public schools and their ethnicity, (3) the geographic distribution of the children of the different ethnic groups, (4) the administrative guidelines that placed children in particular groups.[109]

The study posed the central problems it would attempt to explore: (1) What are effective methods and materials for teaching English as a second language to Puerto Ricans? (2) What are the most effective techniques the school can use to help the Puerto Rican adjust to the community? (3) Who are the Puerto Rican pupils in the New York City schools?

The Puerto Rican Study investigated the different approaches used for the teaching of English, in terms of their effectiveness in imparting necessary language skills. Since no one method was found to be effective in teaching all these skills, it was suggested that a combination of vocabulary, structure, and experimental method would maximize learning. Since none of the approaches had led to significant gains in reading, the study concluded that a more direct attack on the development of reading skills was necessary.[110] The report was the result of a long term project which also experimented with and developed resource bulletins in different subject areas on various levels. The materials utilized English as a Second Language, which at that time was considered the most effective method. The Board developed a rating of ability in English—the "Scale for Rating Pupil's Ability to Speak English"—and rated students on a diminishing scale, from A to G.[111] This system later was revised because federal and state funding applications called for specific information on student language proficiency and achievement.[112]

However, the study did not specify which staff members were qualified to rate students according to the scale. There is evidence, however, that the responsibility fell largely to the classroom teacher. The scale was construed only as a measure of verbal skill, and the categories of performance were left broad and undefined.[113]

As part of the response to the problem of teaching reading to the Puerto Rican child, an experimental science project for junior high school students was initiated. The results merited the conclusion that, in employing bilingual education.[114]

> The principles and procedures guiding the development of the materials herein reported might profitably be employed at different grade levels and in other subject areas to open wider the doorway to science for non-English speaking pupils.[115]

An important recommendation of the study was that schools be staffed with Substitute Auxiliary Teachers (SAT), Coordinators, and others, to meet the specific needs of the Puerto Rican child. Although the practice was instituted on a modest scale, the "teachers" were usually not placed in classrooms, but functioned primarily in advisory capacities—this was a significant part of the plan.[116]

The study realized its own limitations and asked that it be accepted only as a first step, that there was a need to "formulate a uniform policy for the reception, screening, placement, and periodic assessment of non-English speaking pupils."[117] "The alternative is to continue the present high rate of retardation and perennial orienteeism [sic]."[118]

The investigators also proposed that students be grouped according to their rating on the scale. Regular classes would receive continental and bilingual pupils rated A or B. Bilingual students with "demonstrated" abilities, although rated C, would also be admitted to the regular classes. The mixed class would receive continental students and pupils rated C, D, E, or F on the scale. The orientation class, it suggested, should consist entirely of pupils rated C through G who needed aural-oral instruction.[119] In any case, "a daily period of direct teaching of English in an experimental setting, plus continuing attention to pupils' use of English . . .

are two elements of method essential to learning."[120] Although it added that Puerto Rican students should probably qualify for CRMD[121] classes at the same rate as mainland students, it singled out this special class as one of two additional types of classroom organizations in which the needs of the Puerto Rican student might be more readily met. (This was troubling, as CRMD classes were linked elsewhere in the literature with the Puerto Rican).[122] The other recommendation for class organization for in-migration Puerto Ricans was the reception —or "C" class renamed. This would serve to "orient" newly arrived children.[123]

Failure to Implement The Puerto Rican Study

The Board acknowledged its role in the "upgrading and downgrading" of pupils transferred from Puerto Rico to New York. In sum, despite its limitations and viewed in relation to the period in which it was conceived, *The Puerto Rican Study* was monumentally important to the history of the Puerto Rican in continental United States.[124] It was the first systematic study undertaken to document the continental experience of the Puerto Rican.

> Its neglect may be due to its appearance before the advent of the Johnsonian anti-poverty programs of the 1960's . . . and . . . the inevitable fate of sponsored reports whose implementation and evaluation are seldom realized or avoided for a variety of reasons.[125]

Cordasco suggested other possible reasons for the failure to implement *The Puerto Rican Study:* (1) Board of Education and teacher resistance, (2) struggles over community participation and decentralization, (3) absence of qualified personnel, and (4) the accelerated growth of the Puerto Rican community, which simply overwhelmed many of the schools.[126]

Although many states had approved of and supplied bilingual education to immigrant groups before the massive immigration at the turn of the century,[127] it is possible that the monumental 78 percent increase in New York City's Puerto Rican student population from 1958 to 1967 may have coalesced an opposition to programs for Puerto Rican students.[128] The tendency for the Puerto Rican not to be fulfilled through schooling persisted under the supervision of the Board of Education. Of 21,000 academic high school diplomas awarded in 1963, only 331 went to Puerto Rican students.[129]

At a conference for New Yorkers of Puerto Rican origin, the problems and gains made in the wake of *The Puerto Rican Study* were described. Among the achievements cited by the speakers were: Operation Understanding—a limited exchange of continental and Puerto Rican teachers (twelve in 1963), the increased use of science in the junior high school—although applauded this too remained on an experimental basis—and the Career Guidance Projects. The latter program afforded intensive teaching and guidance and emphasized occupational rather than academic education. A new graduation policy allowed certain students, who had not earned a junior high school diploma to return after a successful year of high school, to exchange their certificates for diplomas. The use of English as a Second Language in conjunction with the language laboratory was mentioned, along with some recommendations for teacher training.[130]

In spite of *The Puerto Rican Study*, during the decade following its publication, the Board persisted in leaving a large part of the authority for educating children of limited or no English-speaking ability at the school and district levels. At the school level, where communication with students, principals continued to responding autonomously to the Puerto Rican students.[131] During the period 1950 to 1972, the New York City school system increased substantially in size; but the Board much like the rest of society, assumed the posture of waiting for things to "normalize," with the full expectation that the tide would abate and that the children would learn English.[132]

Between 1957 and 1967, "English only" continued to be the Board's basic policy, determining, to a large extent, the medium of instruction.[133] This policy was retained despite official statements. The first, by Superintendent of Schools Dr. Calvin Gross, "urged that Puerto Rican children and other new arrivals to the city be able to develop biculturally and bilinguistically. . . ."[134] The second, in 1965, announced: "Bilingualism and biculturalism will be encouraged for all pupils. . . ."[135] And, in 1967, Superintendent of Schools Dr. Bernard Donovan testified before Congress: "We are dedicated to the bilingual approach. . . ."[136]

Experimental Programming

In 1968, the federal government passed the *Bilingual Education Act,* commonly referred to as Title VII of the Elementary and Secondary Education Act, it provided financial assistance for the special education of children with limited or no English-speaking ability in schools with a high concentration of families with incomes of less than $4,000 or who were receiving public assistance. Title VII specified that the use of native language as the medium of instruction, before English is acquired, would help to prevent retardation in the schools.[137]

A large number of reimbursable programs were developed under Title I, Title III, and Title VII of the Elementary and Secondary Education Act. Funds from this source were earmarked for the establishment of bilingual, bicultural, and other programs for children with limited or no English-speaking ability. The Board claimed that New York City had vigorously applied for the programs.[138] In 1970, New York State was awarded $1,495,059 under Title VII. California, on the other hand, was awarded $7,231,886.[139] California, however, had submitted 181 grant applications, while New York had submitted only 48. A Title VII representative stated that committees from California and Texas had been far more organized, visible, and voluble in Washington. In addition to having submitted more proposals than New York

State, the California applications were, purportedly, more innovative and better conceived.[140] Since the federal government did not award grants on the basis of the number of affected children or the extent of their need but on the basis of the quality of individual grant applications, New York City received a small allotment, despite its great need.

Puerto Rican Community Research

In the late 1960s, a Board of Education survey placed the number of non-English-speaking students as high as 110,447 out of a total of 243,739 Puerto Rican pupils.[141] A 1971 Board report listed 102,554 Puerto Rican students in New York City schools in 1955—a population that soared to 209,982 by 1965, and to 250,000 by 1970. The total non-English-speaking school population of 121,733 in 1969 included 105,482 of Puerto Rican parentage.[142] As the population soared and the complexity of the education problems continued to mount, the Puerto Rican community in 1967 brought pressure to bear for new methods and programs, which resulted in the report "The Design for the Improvement of Educational Opportunities for Puerto Rican Pupils in New York City Schools."[143] Its recommendations included reception classes, more intensive English-language instruction by trained teachers, better diagnostic scales, the establishment of bilingual instructional programs, recruitment of bilingual teachers, and efforts to license more bilingual teachers.[144] A 1969 report, however, of the program's implementation between 1968 and 1969 showed that little progress had been made.[145]

In addition, a comprehensive study of programs for non-English-speakers was undertaken by a community organization, the Puerto Rican Forum. It claimed that the study was necessary because the Board had not adequately followed through on *The Puerto Rican Study*. The Forum demonstrated that recommendations of *The Puerto Rican Study* on pupil screening and placement had been ignored completely. No tests had been developed for appropriate initial testing in English and Spanish; none was in use. In noting this failure, the Forum urged that research be conducted with special funds through the Central Board in order to develop the necessary testing and curricular materials.

The Board also lacked policies on class placement of non-English-speaking children. Instead, standard English reading tests were administered to children who had been placed in C, D, or F classes—fully two-thirds of all children with limited English-speaking ability. Since the tests were not geared to the needs of the group, the students predictably performed poorly. In addition, specialists in educating children with limited English-speaking ability reported that these children ended up in classes with the most serious discipline problems and the least experienced teachers.[146] Little consideration was given to their individual abilities or problems. Hector Vazquez, the first Puerto Rican member of the New York City Board of Education and Director of the Puerto Rican Forum, testified to the consequences of the lack of screening policies: "A young, non-English-speaking girl had been placed in a regular class. She remained there for seven weeks. It was not until then that it was discovered that she was completely deaf.[147]

A recurring charge in Vazquez's testimony was the dearth of information forthcoming from the Board of Education. Vazquez attributed this in part to the utter absence of Puerto Rican personnel at higher levels, who would have had access to information.[148] Thus, in addition to requesting full periodic disclosure of information,[149] the Forum advanced a firm, fully articulated statement on hiring, substantiating its claim that the Board had failed to fulfill *The Puerto Rican Study* commitment to hire professionals in accordance with students' needs.

Whereas *The Puerto Rican Study* had recommended the hiring of Substitute Auxiliary Teachers, coordinators, and others, the number and nature of appointments made by the Board were inadequate for the group's needs. The Forum emphasized that Puerto Ricans comprised 22 percent of the school population but less than 1 percent of professional appointments—teachers, guidance counselors, Bureau of Child Guidance workers, assistant principals, department chairpersons.[150] The study had urged the hiring of Spanish-speaking Bilingual Teachers in School and Community Relations to facilitate communication among the school, the pupils, and the parents. Investigation in 1971, however, did not find a single such teacher in any academic or vocational high school, and only two in the junior high schools. There was one bilingual teacher in each of 188 elementary schools, although some of the schools had as many as 1,000 Spanish-speaking pupils and at least two or three of these teachers were needed. The study also found a large number of these bilingual teachers assigned to tasks not involving the Spanish-speaking pupils. The increased hiring of Spanish-speaking paraprofessionals had therefore, mitigated the communication problem somewhat, but more bilingual personnel were needed.[151]

In 1968, the community demonstrated that it was resolute in its quest for equal educational opportunity. The Puerto Rican Educational Policies Committee demanded and brought about the Program for the Recruitment and Training of Spanish-Speaking Teachers; it received a small grant under Title I, sufficient to train two hundred teachers a year.[152]

In court documents the Board avowed that it had made concerted efforts to expand and improve programs for children with limited or no English-speaking ability.[153] The Forum commended Chancellor Scribner for urging rapid recruitment of bilingual teachers and for his suggestion that, if necessary, examinations be bypassed. Vasquez, however, insisted that a "massive infusion" of personnel capable of teaching in English and Spanish remained a necessity. Of two channels of recruitment—the million-dollar United Federation of Teachers fund and a smaller, federally funded program

—the first had brought only two hundred applicants and the second, in the course of two years, had contributed only two hundred teachers. This was barely sufficient to replace teachers lost through attrition. Vazquez felt in both cases that irrelevant Board of Examiners tests had effectively excluded Puerto Rican applicants.[154] In fact, a 1969 study conducted by Richard Greenspan showed that Puerto Ricans filled less than 1 percent of all teaching and guidance positions on the Board of Education.

The Greenspan survey detailed the number of positions which whites, blacks, Puerto Ricans and others filled in the school system. It found no Puerto Ricans among the thirty-eight directors and 121 assistant directors of the Board; 94.7 percent and 87.6 percent, respectively, of those chairs had been filled by whites.[155] In April 1970, there were no Puerto Ricans among the fifty-odd assistant superintendents. The study cited the importance of black and Puerto Rican principals to student self image, yet there were only four Puerto Ricans among a total of 969 principals; Puerto Ricans also filled less than 1 percent of all teaching and guidance positions. Outside the professions, Puerto Ricans were better represented, but much less so than blacks. Significantly, 15.7 percent of paraprofessional roles were filled by Puerto Ricans and 6.3 percent of all lunchrooms were staffed by Puerto Ricans.[156]

As a remedy, Hector Vazquez proposed the hiring of 10,000 Puerto Rican teachers and supervisors within four years, and fifty principals and one hundred assistant principals within three years. He urged the appointment of a deputy superintendent who would have direct contact with the chancellor and who would also have the authority to coordinate Board efforts in educating children of limited or no English-speaking ability. Vazquez recommended that the number of teachers in School and Community Relations be increased, and that teachers have a minimum of two years of Spanish and nine credits of course work in English as a Second Language.[157]

A special response to Puerto Rican educational needs became necessary when a 1969 Forum survey of elementary school reading scores in eighty-seven schools with Puerto Rican majorities showed eighty-five out of one hundred pupils reading below grade.[158] Analysis of eighth-grade reading scores in twenty-three intermediate and junior high schools with Puerto Rican majorities in New York City disclosed that 79 percent of these students were retarded in reading; one of every four students was four to five years below grade. The statistics did not reflect the performance of children with limited English-speaking ability, who were not even tested in reading.[159] It was projected that of the 250,000 Puerto Ricans in the schools in October, 1969, 155,000 would be reading more than two years below grade at the completion of their schooling. More than one of every three students—88,000—was classified as "non-English-speaking." Ten thousand received one period a day of English, while the Forum estimated that three of four received no assistance at all in English. Fifty-seven percent of those who reached high school dropped out after two years—twice as many Puerto Ricans as whites. Of these, many never graduated. In addition, many had failed to complete junior high school. These and other drop-outs were computed at between 80 and 85 percent. The high school general diploma which many students were awarded was more a certificate of attendance than a passport to college. Vazquez added:

> The damage done by this educational system can be seen today in the Blacks, Chicanos, and Puerto Ricans. By and large, these three groups have become the main educational problem in this country. But are we the problem or does the problem reside within the unchanging educational structure.[160]

The system, he maintained, was producing educational cripples condemned to the most menial and degrading work in society.[161]

The implications of the Forum's statistics were more far-reaching than was immediately apparent. The tendency of the schools had been to isolate the "real NES"[162] —the child whose language limitation was worn as openly as an albatross—making this child the recipient of special school services,[163] but there was also a large group of students whose language limitation was less obtrusive; they managed to "get by," but their fullest participation was nevertheless impeded by an inadequate mastery of English.[164]

The Forum, therefore, recommended the following teaching procedures: each student should receive English as a Second Language (ESL) instruction as part of his daily instruction; for the remainder of the day, students should be instructed in the subject areas in Spanish; pupils should be mainstreamed only after their mastery of English was established through valid testing procedures; even after learning English, however, students should be given the option of continuing to study Spanish.[165, 166]

The findings of the study came to the attention of Senator Jacob Javits, and the results of an investigation done at his behest reinforced the Puerto Rican Forum's conclusions.[167]

The Opening of an Era – 1970s

A survey of children of limited English-speaking ability conducted by the Board in 1972 identified 143,504 children.[168]

In documents submitted to the court, the Board of Education and the Chancellor summarized their efforts to provide equal educational opportunity to language-disabled children[169] in the early 1970s. These documents argued that the Chancellor and the Board had supported bilingual education as a sound pedagogical approach for some children. In addition, the Board and the Chancellor claimed that there existed a wide variety of programs which could be termed bilingual—including ESL programs. Since the nature and scope of ESL efforts by the Board already have been treated here, the researcher has abstracted from court documents submitted by

the Board a summary of the bilingual programs[170] that existed in the early 1970s in New York City schools.[171]

In the early 1970s the number of programs described as "bilingual" was limited neither by the variety in their design nor by the scope of their goals. There were schools committed entirely to bilingual education; there were single tracks—complete programs at every grade level within a regular school; and there were bilingual classes, in which all subjects in one or two grades were taught in both languages. The intention of the latter was expansion until a complete bilingual track was achieved. Finally, there was bilingual instruction in a subject area, such as in science in a Bilingual Junior High School Program.

Two bilingual programs started in 1968; three were added in 1969, and thirty-two in 1970. Observers caution that though it would appear that a major effort was made in 1970, this impression was offset by the small increase in Spanish-speaking students included in new programs.[172] Prior to 1970 there were 2,086 Spanish-speaking students in five programs, and in 1970, thirty-two programs began, but these involved only 2,332 students.[173] Most of these were one-year programs that were intended to expand each year.

P.S. 211 and P.S. 25 both in the Bronx had the most comprehensive programs. Community pressure and educational leadership in District 7 of the Bronx brought about the formation of the first bilingual public school, P.S. 25, in September 1968.[174] The school was in an old building scheduled for demolition, but it provided a well-integrated program of instruction, teacher training, parent participation, and curriculum development organized to meet the objectives of bilingual education.[175] The program first financed with district funds and then received funds in 1969 as one of two programs in the city funded by the Bilingual Education Act.[176] The children of P.S. 25 were predominantly from Spanish-speaking backgrounds. However, 16 percent were Blacks whose parents had expressed interest in having their children attend the school. All participation was voluntary.[177]

Classes were organized according to English-language dominance and Spanish-language dominance. Instruction was provided in curriculum and language areas according to ability. As the child progressed in the second language, the amount of instruction in English increased, until he received half of his instruction in his native language and the other half in English. Attendance rarely dropped below 90 percent. In the second year of its existence, 98 percent of the children returned, and those who did not had immigrated to Puerto Rico.[178]

In 1972-73 the Board asked for and was granted nearly $1,000,000 of supplementary tax-levy funds for services such as the staffing of programs for pupils with English-language deficiencies. In 1972, the Office of Bilingual Education was created by Harvey Scribner. He appointed Hernan LaFontaine, a former president of the Puerto Rican Educator's Association, the principal of the first bilingual school, and a community leader to direct the office.

In 1974, the Board claimed substantial increases in bilingual classes, schools and mini-schools "in recent years." A large number of Puerto Rican pupils had been prepared for college through the College Bound and College Discovery Programs. Ethnic studies courses had been introduced in many high schools, although in 1970 there was still no bilingual high school in New York City. In-service training and recruitment had been conducted; new bilingual licenses had been established.[179]

It was clear that by 1972 the Board had made substantial inroads in educating children of limited English-speaking ability. However, only a fraction of children in need of such programs was participating. Consequently, the community continued to press for a clear statement of policies and a comprehensive educational program in which all children would have the opportunity to participate fully.

An Interest Group's Role: The Puerto Rican Community

Current policy-making theory supports the notion that interest groups play an important role in public educational policy-making.[180] In this regard Thompson, amongst others espouses the group theory of politics. He points out that "political processes operate from a group basis. To achieve a desired objective in public policy, an individual must join with others who have similar preferences."[181] It is important, in this light, to document the role the Puerto Rican community has played as an interest group pressuring for change in public educational policies in New York City.[182]

The *Aspira* suit purported to represent the claims of 180,000 Puerto Rican children. If the suit were to be successful, it was important that it not be challenged by any significant number of children within the class. Therefore, such a suit presupposed a substantial commonality of purpose within the community. The community's collective view and goals in terms of education needed examination and its educational aims required consideration within the context of the community's common experiences.

This study identifies a number of such experiences that may have functioned dynamically to bring about broad-based behavior, which could be interpreted as: commonality of purpose, fear, a sense of hopelessness, sense of helplessness, or lack of interest. The latter two alternatives, although there is a high probability that they were present to some degree, cannot be viewed as a broad-based posture of the community. This is particularly true in light of documentation of the various activities and positions of the Puerto Rican community with respect to educational issues during the decade prior to the suit.[183]

Since not one of the many Puerto Rican community groups or leaders acted to intervene in the filing, litigation, or resolution of the suit, the researcher assumes that there was a strong current of similar objectives and diverse preferences in the community. A study of the effects of selected common factors in the community's

experience substantiates this assumption. Particularly relevant were the effects of:

1. the imposition by the United States of language-of-instruction policies on the island;
2. the community's failure to participate fully in mainstream society;
3. the community's organizational life; and
4. the community's view of educational issues regarding integration and desegregation.

Although particular attention is given to Aspira because of its role in the suit, its experience must be placed within the context of the total Puerto Rican community and society at large. This is important because Aspira is one segment of a larger group, whose unique common experiences distinguish it from other groups.

One experience shared by Puerto Ricans is given very little importance in the literature. It is the issue of language-of-instruction policy on the island.[184]

The Imposition by the United States of Language and Instruction Policies on the Island

Puerto Ricans came to the continental[185] United States with a political experience rooted in the controversy of public school language policy.[186] Between 1898 and 1952, the United States named the commissioner of education and other major policy makers of Puerto Rico's public schools.[187] United States' imposition of language instruction policies began in 1898, with Puerto Rico's colonization after the Spanish-American War. Until that year, Spanish had been the only language of instruction in the island's schools.[188]

Leibowitz traces language-of-instruction policies from the time of Puerto Rico's first commissioner, Martin Brumbaugh (appointed by the President of the United States), to the era of Mariano Villaronga, the first Puerto Rican commissioner named by an elected governor of the island. Leibowitz maintains that the United States government's language policy toward Puerto Rico is poignantly documented inasmuch as "the role of conqueror and conquered was explicit and the act of imposition did not have to be masked."[189]

The policy adopted by the first commissioner, the "Brumbaugh Policy," provided for the "conservation of Spanish and acquisition of English."[190] A second policy, requiring English as the language of instruction in all grades, was initiated in 1905 by Commissioner Roland Falkner. Strong reaction to this and other policies was at the root of pressures on the island to clarify its own political situation.

> The debate and the nature of these changes raised serious questions about both the long-range and current character of the United States-Puerto Rico relationship. In Puerto Rico, the issues provided the basis for the establishment of what were to become the classic status positions (independence, statehood, and some kind of dominion status).[191]

Bills were introduced in Congress to amend the Foraker Act of 1900 and the initial Organic Act. In 1917, Puerto Ricans became citizens after Congress enacted the Jones Act.

Coincidentally, in 1916, amid dissension amongst Puerto Rican factions, Commissioner Paul Miller enacted a third language-of-instruction policy change, which was to remain in force until 1934. Miller's policy provided for a combination of Spanish and English: Spanish, from grades one to four, Spanish and English, in the fifth grade, and English, in grades six to twelve. Problems of policy implementation, nevertheless, continued.

In 1925, Teachers College of Columbia University surveyed the island's public educational system and concluded that instruction in the subject of English[192] be postponed until the fourth grade and that English not be the medium of instruction until the seventh grade.[193] This recommendation was challenged by another study in 1928 by the Brookings Institute, which essentially suggested that, despite the possibility that English instruction may adversely affect the school atmosphere and learning process teaching in English in the elementary grades should continue. They maintained that this was essential because

> an opportunity to learn English, no matter how imperfectly and inadequately, is one of the magnets that draws the children of the poorer classes to the public schools. To tens of thousands of the disinherited in Puerto Rico a knowledge of that language seems to promise—perhaps fallaciously—a better economic future. Popular willingness to make sacrifices for the schools is in some degree due to this pathetic faith . . .
>
> Moreover, English is the chief source, practically the only source, of democratic ideas in Puerto Rico. There may be little that they learn to remember, but the English school reader itself provides a body of ideas and concepts which are not to be had in any other way.[194]

In 1934, Jose Padín, the first Puerto Rican Commissioner of Education, further limited the use of English. Spanish became the language of instruction from first to eighth grade, and English was taught for ninety instead of forty-five minutes at the seventh and eighth grade levels. Padín based his new policy on his own research and experience that children learn subject matter more effectively when their first language is also the language of instruction.

In 1936, political conflict between the different status factions on the island exploded, culminating in the March, 1937 Palm Sunday Massacre in Ponce.[195] This brought American reaction. President Roosevelt made the first address regarding the language of Puerto Rico, reinforcing the position that English must play a stronger role, but that Spanish need not be omitted.

> But bilingualism will be achieved by the forthcoming generation of Puerto Ricans only if the teaching of English throughout the insular educational system is entered into at once with vigor, purposefulness and devotion, and with the understanding that English is the official language of our country.[196]

Political unrest continued through the thirties, together with economic pressures and instability. The United States attempted during this period to make English the sole language of instruction or, at minimum, to place it on an equal footing with Spanish.

In the early 1940s the need for ameliorating Puerto Rican-American relations received much attention. In 1947, Commissioner Villaronga introduced the sixth major language change: Spanish was made the language of instruction at all levels of the public system. However, the Senate Committee on Territories and Insular Possessions withheld his confirmation and Villaronga withdrew. Puerto Rico's first elected governor, Luis Muñoz Marin, reappointed Villaronga on January 3, 1949. The policy making Spanish the official language of instruction was reinstated.

> Some years later, in 1952, the people of the Island voted to become a free and associated state with the United States. Thus the Commonwealth of Puerto Rico was born. These two events, I believe, signal the beginning of a separate and unique period in the history of Puerto Rico. We are now free to attempt to build a school system which best serves the needs of our society, best represents our culture and values.[197]

Experience with an imposed language policy and the resulting concerted efforts of a people to change that policy spanned decades on the island. Leibowitz suggests that "it was the act of imposition itself which created the reaction."[198] Moreover, the united reaction had broad-based ramifications for the people of Puerto Rico; it continues to the present to have an effect, since "the role of English in the school system still has status and political overtones in Puerto Rico,"[199] and it continues to divide the community along party lines. Nonetheless, it is only a recognized minority that has sought to exclude English from the curriculum, largely the Partido Independentista (the Independence Party). Both remaining parties support Spanish as the language of instruction, urging different degrees of English influence.

This study makes the assumption that this historical common experience had ramifications on the New York Puerto Rican community's views and attitudes toward policies regarding language of instruction. The Puerto Rican is a citizen whether he is on the island or on the continent. Yet, he is expected to accept inconsistencies. These inconsistencies include those highlighted by former Senator Robert F. Kennedy. In sponsoring section 4(e) of the Voting Rights Act of 1965 he stated that the Puerto Rican

> . . . in school reads, in Spanish, the same textbooks which his fellow citizen on the mainland reads in English. That his schooling takes place in Spanish is not up to him, but is due to the fact that the U. S. Government has chosen to encourage the cultural autonomy of the Commonwealth of Puerto Rico, to make Puerto Rico a showcase for all of Latin America.[200]

Aspira stated, furthermore,

> For the New York City schools to suppress the use or fail to nurture a Puerto Rican child's Spanish while the federal government mandates that same child receive his education in Spanish before he arrives here is patently irrational as well as pedagogically absurd.[201]

The Puerto Rican, then, has been predisposed to maintain his language and not to accept being grouped among other immigrant non-citizens required to give up their language as the price for American citizenship. The fact that the Puerto Ricans maintained their language despite American attempts to impose English both on the island and on the mainland was a subject of concern and study on the continent during the early 1960s.[202] Similar to the island's experience, educators and sociologists on the continent fully expected that "given another generation," Puerto Ricans, like other groups before them, would become English speaking. But this prognosis proved ill-founded.[203]

The next subsection will look at other areas in which the Puerto Rican community did not meet its own expectations or those of sociologists of the 1960s.

The Community's Failure to Participate in Mainstream Society

Puerto Ricans as a community have shared the frustrations of never reaching their objective for in-migration to the continent—participation in mainstream society.[204] As documented aptly by many researchers and sociologists, the Puerto Rican came to the United States seeking work and a good education for his children.[205] However, despite predictions that the Puerto Rican, as other immigrants before him, would assimilate,[206] he did not.[207] Language and cultural modes have remained strong elements of the Puerto Rican community's cultural expression.[208] Some have sought the explanation within the group—finding a culture of poverty.[209] This and similar arguments have been disclaimed repeatedly by the community itself.[210]

As early as 1965, Antonia Pantoja argued against this notion, stating:

> In reality the ethnic group is the only democratic vehicle left for the minorities of the United States to achieve equal status with the rest of the American citizens. This situation is most prevalent with minority groups which are culturally or racially different from the dominant society. . . . They are amongst the most powerless and voiceless, the poorest and most discriminated against groups in the country. I am referring to such groups as the Mexican American, the Indian American, the Puerto Rican American and others. They are excluded either by design executed by our legal system or by submerged social mechanisms or subtle manipulations, but with, nonetheless, effective results.[211]

The "culture of poverty" notion was refuted most recently by the United States Commission on Civil Rights (USCCR) (1976) study, which supported the assumption that socio-economic variables are at the root of the Puerto Rican's exclusion from full participation in American mainstream society.[212] These socio-economic vari-

ables included: the national economic recession, racism, language discrimination, lack of political access to power and services on all levels of government, and the failure of the educational system to educate Puerto Rican children effectively.

The Community's Organizational Life

Partly in response to the frustration of not achieving his goals for economic progress and the loss of hope for his children, and partly out of deeply rooted cultural ties and experiences, the Puerto Rican, in the 1960s began a movement for greater community institutional development.[213] Though informal groups, largely home-town groups, were numerous in the fifties, the sixties brought a "master plan" for the community.[214] The Project's design was based on the theory that the community must recognize and reinforce many aspects that made it different from other groups. These included cultural modes, language, and a unique citizenship status. The Project proposed the establishment of a network of services in key areas, such as education, job development, and economic development. The Project was not funded initially, ostensibly because of its "ethnic" emphasis.[215] "The city wanted to fund projects more on the 'nuts and bolts' level of jobs and immediate income."[216] This was regrettable because the Forum had brought together, under the leadership of Antonia Pantoja, broad-based segments of Puerto Rican leadership. As a consequence, the leadership split into two factions.[217] Nonetheless, in the end, three community agencies resulted: the Puerto Rican Forum, which addressed economic needs; Aspira, which dealt with educational issues; and the Puerto Rican Community Development Project. All three agencies continued to have common elements; they were modeled, to differing degrees, on Sol Alinsky's social intervention theory, serving as pressure groups for the Puerto Rican community. They all stressed the need for the maintenance of language and culture. This was also true of the Office of the Commonwealth of Puerto Rico and the hundreds of home-town groups that played important roles in the 1940s and 1950s as avenues for cultural maintenance.

Many other agencies and organizations were an outgrowth of the 1960s, including the Puerto Rican Family Institute,[218] the East Harlem Tenants Council, and the Puerto Rican Association for Community Affairs.[219] Also, a number of professional organizations evolved, including: Puerto Rican Educators, the Organization of Puerto Rican Social Workers, the Puerto Rican Policemen Association, and the Puerto Rican Merchants. Other organizational developments included the establishment of the Puerto Rican ethnic studies programs in universities[220] and the first Puerto Rican private university, Universidad Boricua,[221] on the continent.

The development of these programs and agencies paralleled the development of the civil rights movement. This period saw the rise and decline of massive federal support for community efforts on all levels, through programs such as the War on Poverty. A comparison of the efficacy of the War on Poverty and the decline of Puerto Rican agencies such as the Puerto Rican Community Development Project and the Puerto Rican Forum leads to the conclusion that neither agency was successful. "Both had something in common, each was a long-range strategy with insufficient funds and political clout to accomplish its task."[222] Certainly the Puerto Rican Community Development Project, the Puerto Rican Forum, and many other agencies saw critical economic times in the early 1970s; this was a function of the economy of the times. Massive community organization in the 1960s, nonetheless, probably served to instruct the Puerto Rican people in interest-group politics. The need for coalitions, unity, and a common definition of goals and strategies were all part of the community-organization process. The organization process may have served to prepare the community for the undertaking of a major common effort. In any case, it has been recognized that "[it] served as a hothouse for leadership development and for the acquisition of skills necessary to develop the kind of power needed to exert influence to reshape a hostile environment."[223]

Evidence of the community's efforts to unite in order to obtain political power can be found in the proceedings of two important conferences held in New York City in 1967 and 1969; both conferences were sponsored by the mayor's office. In terms of issues, then-Mayor John V. Lindsay singled out the area of education as one in which the community and the city had to address concerted efforts. With regard to the question of factionalism within the community, he stated:

> Some have held that because of factional differences, it is almost impossible for the city to establish a sound relationship with the entire Puerto Rican community. . . .
>
> I have become convinced that there is no substance to this theory. I suspect, in fact, that it has been used as an excuse by those who were reluctant to tackle difficult issues involving Puerto Ricans.[224]

The Mayor further spoke about the education of the Puerto Rican, stating:

> Yet we have a long way to go in our own city school system. One-fifth of our school population—more than 200 thousand of the million children in New York's public schools—are Puerto Rican. This calls for a greater voice of the Puerto Rican community on all levels of the educational structure. . . .
>
> It also calls for a more effective response, in terms of curriculum and teaching methods. Pilot projects are not a long-range answer—what is needed is a fundamental review of the educational program for 20 percent of our pupils.[225]

The prime focus of this study is Aspira, it is therefore particularly appropriate at this point to examine existing commentary on the agency's strategy and effectiveness. In this regard, Fitzpatrick states:

> Of all the grass-roots organizations of the Puerto Rican community, Aspira has probably been the most effective

> It has become nationally known, and its service to Puerto Rican youth has been remarkable. . . . The Aspira staff has spoken for the Puerto Rican community on educational issues and has considerable influence. . . . In terms of solid and tangible achievement, probably no other Puerto Rican organization can show as much evidence of accomplishment as Aspira.[226]

Aspira's strategy, in terms of community organization, has been to develop leadership and reinforce cultural identity among Puerto Rican youth: "Aspira's program is based on the absolute belief that there is only one certain avenue remaining for the Puerto Rican to lift himself out of the grip of poverty—education.[227] The process involves instilling skills in dealing with the environment and the conflicts inherent in being an ethnic minority. The method is based on a social-change model.[228] However, to a large extent these goals have long-range rather than short-range impact, because to a large extent they have primarily involved youths in high school. The short-range objectives are to keep the student in school and to get him into college. The limitations of Aspira's impact have been recognized and respected; it has remained within the realm of educational services in order not to diffuse its efforts by engaging in unrelated or short-range multiservice poverty approaches. "Yet we are keenly aware of the hardships our community continues to endure." Educational achievement by itself is not enough. "Only when coupled with progress against inequities in schooling, housing, jobs, business and career opportunities, can the achievements of Aspira be counted."[229]

The agency's name is a familiar one in the community. This is partially due to the fact that Aspira has existed for fifteen years and has functioned as a major Puerto Rican community agency, appearing often in the media and at public community functions. In terms of leadership in the field of education, Aspira has been involved in many strategies on local as well as national levels with the goal of influencing those public educational policies that affect the community.[230] It has actively and concertedly played its role as a pressure and interest group. It has increased community and institutional awareness of the educational plight of Puerto Rican children by taking public stands on policy issues and compiling reports and papers regarding these issues. It has convened many national and local conferences of Puerto Ricans, Mexicans, and other educators: "The Special Educational Needs of Urban Puerto Rican Youth,"[231] The National Think Tank on Bilingual Bicultural Education,[232] and other regional and local conferences. Within the context of the Glazer and Moynihan model for the accommodation of conflicting interest groups,[233] the formation of local and national coalitions with a variety of other groups[234] has also been part of its national strategy.[235]

Specific programs and activities in which Aspira was involved prior to the suit are elaborated upon in Chapter II. At this point it is relevant to demonstrate the impressive background from which this community agency purported to represent the interests of 180,000 children. Among its qualifications were: (1) it was well-known; (2) it had a substantially recognized reputation; (3) it had contact in and access to the schools to identify named plaintiffs and to keep abreast of the Board's actions; (4) it had researched, to a limited extent, the educational experience of Puerto Rican children; and (5) it had the resource, though limited, to obtain the support of experts and witnesses. To what extent each of these factors played a role it is impossible to state. Another question is: Could the suit have been brought without any one or all of these factors? Probably. Many successful class-action suits have been brought by individuals. However, in terms of the Aspira suit, since the community had so many of its own organizations, it is doubtful whether it would have allowed anyone but one of its own agencies to represent the interests of its children.

The Community's Position on Educational Policy Issues

To summarize some of the points already considered in other contexts, it has been established that the Puerto Rican community, in terms of cultural values, places great importance on education; as sociologists have shown, this was a causative factor for migration. In addition to its common experiences, the community has also shared in the frustration resulting from the continued underachievement of its children in the New York City schools.

One other factor, however, that may have contributed to the community's support of *Aspira* was related to its experiences with other policy issues of the late 1960s and early 1970s. These include school integration and decentralization.[236] Both issues are difficult to treat because of the paucity of literature on the Puerto Rican and his position on these issues, as they relate to educational policies affecting the education of the community's children. This is particularly true with regard to school integration. It is perhaps complicated by the fact that:

> Within the U.S. perspective, Puerto Ricans, racially speaking belong to both groups (black and white); however, ethnically, they belong to neither. Thus placed, Puerto Ricans find themselves caught between two polarities and at a dialectical distance from both. Puerto Ricans are between white and black.[237]

Puerto Rican and American definitions of color differ. The simple "black-white racial criteria commonly used in the United States are wholly inadequate when applied to the multiracial Puerto Rican community."[238]

The reasons for the absence of a clear and vociferous Puerto Rican position on school integration may be rooted in this conflict.[239] Puerto Ricans may refrain from getting involved in issues related to race, fearing that they would be defined as Black, thereby acquiring another legacy of oppression and discrimination.

> As we have discovered, here one is black, white, or a non-something. Still, Puerto Ricans—white or black—have

little comprehension of the deep racial animosities that divide mainland Americans. Many are understandably reluctant to become part of a fight that is to them ugly and meaningless.[240]

There is a tendency in the literature to equate the educational needs and policy positions of Puerto Ricans with those of Blacks.[241] Ravitch, in her (impressive) history of New York City schools, devotes over two hundred pages to the Black and Puerto Rican experience; on no issue was she able to differentiate between Black and Puerto Rican community perspectives or positions.[242] A similar case in point is the work of Fantini and Gittell on the issue of school decentralization, which offers perhaps two pages on the issue of the education of language-minority children.[243]

Puerto Rican leadership has sought to focus the community's goals on quality education as opposed to white-black issues. In 1968, at the height of the desegregation movement, Frank Bonilla stated in a keynote address at a national conference sponsored by Aspira:

> This focus on a language goal is vital to a solution of the problem before us, but it should not overshadow the more basic question of the general quality of education available to our children, nor should we allow these goals to distract us from the main attack on educational inequality. The predicament of our children is shared by thousands of other poor—black and white. Though we like to think that as a community we are racially integrated, our children are in schools sharply segregated by class and race. Since, referring again to the Coleman Report, the class and racial composition of a school is the single factor that seems most to affect achievement, and above all for Puerto Rican children, this is a matter of critical concern. In those New York City schools where Puerto Rican children are concentrated, black mainland children tend to be in the majority or to substantially outnumber whites. To me, this means that the predicament of our children is inextricably bound up with that of the mainland black community. It also means that the mainland black community has a substantial stake in the solution of our problems and that we must manage to make them see clearly the nature of that problem.[244]

Patricia Cayo Sexton relates in *Spanish Harlem:*

> When the first city-wide school integration boycott in New York came along, the citizens' school committee of East Harlem hesitated. Puerto Ricans were not strong for protest or integration, the feelings of whites were mixed, and strong Negro sentiment was not forthcoming for various reasons. After lengthy debate, led mainly by whites on both sides, the school committee finally supported the boycott. On the day of the boycott, its support was, like Central Harlem's, more than 90 percent effective. . . .
>
> School integration achieved by busing, a method championed in New York mainly by middle-class Negroes in the ghetto, has had less appeal in East Harlem than in other places. Puerto Ricans have held back from the integration and civil rights struggle, and many whites in East Harlem school groups feared that busing would remove the active parents from the schools. These whites seem to have one object: to build East Harlem into a real community. Both urban renewal and bused integration run contrary to their goal when they threaten to disrupt the community and remove the more "Participating" citizens.
>
> When East Harlem turned out for the integration boycott it was the first time in the community's history, or the city's, that Puerto Ricans joined with Negroes in protest and pursuit of a common goal.[245]

Sexton viewed parental fear, stemming from an experience of rejection and discrimination, as a key factor in rejecting school busing. The Puerto Rican feared increasing the possibility of his child's coming into conflict with racial issues. Such adverse experiences in strange neighborhoods were expected.

Sexton's insights regarding the Puerto Rican's support of the local school have been supported recently by a study of Chicano[246] and Puerto Rican attitudes on the issue of school desegregation.[247] The study was based on interviews conducted in Los Angeles, San Antonio, New York City, and Washington, D. C. The study found that Mexican-Americans were generally favorable to desegregation. According to the researchers, at the base of this attitude was the conviction that "desegregation would improve the quality of education provided their children. . . ."[248] However, the study found that Puerto Ricans differ from Chicanos as to the effect of desegregation on educational quality. In accord with Sexton's view, the study found that Puerto Ricans believe strongly in "retaining children in elementary schools located in their neighborhoods regardless of the school's ethnic composition."[249]

This study is also important for its findings that confidence in desegregation is heightened by the incorporation of bilingual bicultural programs. This suggests that Puerto Ricans may view the issue solely on the basis of the linguistic and cultural needs of their children, thereby, considering the black-white issue again irrelevant.

Finally, it was established the Puerto Rican community may reject integration and busing as unviable political strategies. The community had not been exceptionally effective in changing policies in schools in which Puerto Ricans were a substantial part, if not the majority, of the population. What would happen to bilingual education, English as a second language instruction, and other services if their children were dispersed throughout the city?

In 1968, Joshua A. Fishman in the first comprehensive study of language usage in the Puerto Rican community in New York, found that the community at that point in its history was not yet language-conscious or organized on behalf of language use and maintenance. He also found that the majority of Puerto Rican parents interviewed felt that transmission of Spanish to children was their own task;[250] only the intellectuals preferred placing more responsibility on the schools.[251] In addition, he confirmed the theory that Puerto Ricans maintained their language longer than other ethnic groups.[252]

Bilingual education was viewed by Aspira, and later supported by the community, not necessarily as a sound

pedagogical process, but rather as a political tool[253]—a conceivable mechanism of maintaining children in neighborhood schools,[254] while reinforcing language and culture.

The Puerto Rican's position with regard to decentralization was similarly "inconsistent and unclear."[255] Herman Badillo, then Borough President of the Bronx, warned the community against decentralization and community control. "Unless it is accompanied by additional funds," he said, "then the poor will be abandoned altogether."[256]

The community generally feared decentralization because of its political ramifications. As was the case with respect to desegregation, the community feared being divided into smaller power struggles where Blacks or whites would remain in the majority. The community's voting turnout was so poor that a power struggle decided on the basis of the popular vote would probably be lost.

Despite these reservations, Hector Vazquez relates that decentralization was supported by

> Antonia Pantoja, founder of the Puerto Rican Forum, Inc. and member of the Bundy panel; Hector I. Vazquez and Ana Conigliaro, Puerto Rican members of the Board of Education; Aspira: The Puerto Rican Educators Association; the United Bronx Parents, a predominantly Puerto Rican organization; and other representative groups. Herman Badillo, a native Puerto Rican and Bronx Borough President, accepts decentralization but has expressed reservations as to how far it should be carried out. The Kings County Puerto Rican Leadership Conference, attended by a thousand leaders of the Puerto Rican and Spanish-speaking community in Brooklyn, demanded greater representation in exchange for support of decentralization plans.[257]

Once decentralization was viewed as inevitable, Puerto Ricans participated:[258] the United Bronx Parents and the Community Development Project were active in the Bronx and East Harlem; the East Harlem Tenants Council and the East Harlem Coalition were very much involved; on the Lower East Side there was participation by the Puerto Rican Democratic Club; and Brooklyn experienced the leadership of such organizations as the Williamsburg Community Corp.

The resulting frustration of the Puerto Rican community was depicted by Steiner in *The Islands:*

> "For ten years we have worked on the concept of community control of the schools," said Gerena Valentin, who organized several boycotts of the schools by tens of thousands of Puerto Rican parents. He now had doubts about the success of the concept of community control, much less its practice.
>
> "We have no control," he said. "The school system is controlled by the white establishment. At the time we said that community control for us in the barrio meant control, real control, of the purse strings, of the hiring of teachers, and of what our children were taught. That was real community control. It doesn't exist. It has never existed. It cannot be said to have failed because it has never been tried in any barrio anywhere in the United States. It is a charade. The establishment, in the schools and the unions and the government, beheaded that concept of democracy in its infancy. How? A few concessions were made to the demands of the barrio. But that was a political maneuver by politicians to divide the school pie, the educational budgets, a little differently.[259]

In terms of political power through voting, Puerto Rican participation since the first school board elections had decreased—as had public participation in general—having started at only 11 percent of the vote.[260] Another blow to the future of the political influence of the community came in 1969 when paraprofessionals working in New York public schools (including the largest group of Puerto Rican workers in the city) voted to have the UFT represent them.[261]

As early as 1968, at the Aspira conference on the educational needs of Puerto Ricans, there were discussions concerning strategies for organizing the community around common goals and for meeting the need for coalitions. Father Joseph Fitzpatrick almost prophetically stated:

> If the Puerto Ricans are to overcome the serious disadvantages which they suffer, especially in education, they must become a political voice, an interest group pressuring for their own rights and interests. . .
>
> Formulation of a political bloc is dependent upon two factors: first, the establishment of a common identity and, secondly, an issue about which to rally forces. Language is one possible characteristic which could fulfill these two requirements.[262]

At the same conference Richard Margolis, author of "The Losers," (a paper commissioned by Aspira to serve as a think piece), states that

> if the Puerto Rican community is to make a major impact in the schools it will have to be through specific recommendations supported by specific data. No school system, no matter how humane its intentions, is likely to come up with a comprehensive program aimed at saving Puerto Rican children unless the community suggests one and presses for its enactment.[263]

To place the ramifications of these issues in proper perspective, one must also take into consideration that, in 1967, as a result of tremendous political pressure and organization, the Chicano community had obtained support for national legislation favorable to its cause.[264] National congressional hearings had been held and Aspira was involved in an effort to build solid national affiliate offices in five cities. Aspira was seeking to establish a national movement; in so doing, it had to define national policy issues and national solutions—these were to be bilingualism and biculturalism. Though these were themes that could be traced back to Aspira's inception, Chicanos were far better organized in the area of education policy impact.[265]

In summary, integration and decentralization issues were ones that served to force the Puerto Rican to search out and support a third alternative.[266]

The State Role

The Constitution provides that the organization and administration of public education fall under the aegis of the state. In New York, the State Constitution gives public educational policy-making powers to the New York State Legislature and the Regents. In practice, pursuant to the passage of laws, there are actually four levels[267] of educational policy-making, including: the State Legislature, the Regents, the Commissioner of Education, and the local school board.[268]

The following section examines the first three levels of policy-making to determine, within the parameters of their power, what was their role in bringing about policy reform in New York City schools for children of limited or no English-speaking ability prior to the 1972 filing of the Aspira suit.

The role played by the state in *Aspira* was essentially an indirect one, as it was not named as a defendant in the suit. However, the state made various changes in its policies just prior to the suit and it sponsored research that was essential to both parties of *Aspira* in arguing the case.

The thesis of this study is that policy-making is a dynamic process, brought about by the interaction of intra- and extra-governmental forces. An effort is, therefore, made, wherever possible, to document or infer the possible role which other governmental systems or the Puerto Rican community have played in bringing about policy reform on a state level.

The State Legislature

Article XI of the State Constitution states that "the Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the state shall be educated."[269] Within the parameters of this state constitutional mandate and that of the United States Constitution,[270] the state legislature passes laws that provide a broad policy framework for public education and appropriates funds to implement these policies. State laws, then, determine such matters as: the kinds of schools established, the number of days and hours they are in session, minimum curriculum standards, certification requirements for teachers, and the nature of the organization and administration of the school system.

In terms of the education of language-minority children and those of limited English-speaking ability, it must first be noted that, in 1972, the state had no system for identifying the linguistic skill of either of these groups of children. Data collected by the State Education Department (SED) divided minority children into two categories, Black and Spanish-surnamed American (SSA).[271] In New York State, as in New York City, the SSA population is primarily Puerto Rican[272] and its numbers have consistently increased in the past twenty years.[273] The population of SSA students in state schools in the 1971-72 school year (the year the suit was filed) was 332,503, or 9.4 percent of the state's total student population.[274] They were concentrated in the "Big Six" cities (New York, Syracuse, Buffalo, Rochester, Albany, and Yonkers);[275] but the overwhelming majority of these students was concentrated in New York City, where there were 304,034 SSA students in 1971-72.[276]

In light of the fact that there were some 30,000 SSA students in districts outside of New York City, a full understanding of why "the education of language-minority children in New York State is viewed as a New York City problem"[277] requires further analysis of the data. Table 1 shows that there are forty-three districts whose SSA pupil population was between three and fifteen percent of their total pupil population. Table 2 illustrates that there were only twenty-four districts in the state in which there were over 150 SSA pupils.

This might suggest that approaches to designing and administering programs for SSA students would have to differ between the "Big Six" cities and districts in the rest of the state. This might also explain why the SSA, particularly the Puerto Rican, student was essentially "invisible" in New York State education policy prior to 1970. Once again, no data existed on the English linguistic skills of these children. It could be assumed that the absence of any policy at the state level might have been a function of the small number of SSA students in the majority of upstate districts;[278] the group's numbers were not substantial enough to be influential. It is also conceivable that parents were unable to negotiate the system effectively because of communication barriers, cultural differences, and discrimination.[279]

Table 1

NUMBER AND PERCENT OF DISTRICTS AND PERCENTILE RANGE OF SPANISH-SURNAMED AMERICAN STUDENT POPULATION NEW YORK STATE: 1971-72

Number of Districts*	Percent of Total Districts in State	Percentile Range of SSA Students in Districts†
244	33.3	0.
75	10.2	.01
237	46.0	.01-20
25	3.4	2.10-30
22	3.0	3.10-50
4	0.5	5.10-60
12	1.6	6.10-10
5	0.7	10.10-15
3	0.4	15.10-27

*Spanish-surnamed American includes children of Mexican, Central American, South American, Cuban, Puerto Rican, Latin American, or other Spanish speaking origin.

†Source: University of the State of New York, "Racial/Ethnic Distribution of Public School Students & Staff in New York State 1971-72."

Clearly, then, the task of addressing these needs and designing viable programs was handicapped by the absence of performance data for this group of children in all parts of the state (with the exception of New York

City, to a degree, because here there was some minimum of data).

The role of the state legislature was clear prior to 1969, because state law[280] specified that English was to be the sole language of instruction in the state's schools.[281, 282] In 1969, Assemblyman Armando Montano (D., Bronx) authored and obtained the passage of a bill that amended this law and made it possible for children of limited English-speaking ability to receive instruction in subject areas in their native language for a period of three years. Assemblyman Montano and other Puerto Rican legislators complained that this period of time was not long enough and sought support from the Commissioner of Education and the State Education Department (SED) for the passage of bilingual legislation.[283] The legislation was passed and became effective in 1970; however, it did not change New York State's English-only policy substantially. The new law provided only that districts "may" provide those pupils having "difficulty in reading and understanding English"[284] with instruction in their native language—once again leaving the decision to the local school district. In addition, no funds were appropriated for such instruction. Instead, the law "allows" local school districts to implement bilingual education programs that conform to Title VII of the Elementary and Secondary Education Act.[285]

Since 1967, many attempts have been made to pass bilingual education legislation.[286] For instance, in the 1972-73 legislative session alone, three bills were written and introduced through committee.[287] (Those opposing the bills included the United Federation of Teachers.)[288] In 1972, there were only one Puerto Rican State Senator[289] and three Puerto Rican State Assemblymen.[290] Although Senator Garcia sat on the Senate Education Committee and Assemblyman Montano on the Assembly Committee, the lack of political representation and power of the Puerto Rican community as a whole made passing the bilingual legislation, which the community wanted, more difficult.[291]

In 1971, a study was conducted by Kloss that analyzed and categorized state statutes according to whether the laws prohibited, permitted, or said nothing about non-English instruction in public, private, or both public and private schools.[292] He found that thirteen states had statutes that required English to be the exclusive language of public and nonpublic school instruction (other than foreign-language instruction, in which case the foreign language is the subject being taught). He found seven states that had similar "English-only" statutes, but applicable only to public schools. Two states had similar statutes, applicable only to nonpublic schools. He also found eight states with statutes that expressly permitted non-English instruction in school subjects; this applied to both public and private schools.[293]

The 1970 legislative session appointed and appropriated funds for the Commission on the Quality, Cost, and Financing of Elementary and Secondary Education in New York State. A Puerto Rican was not named to the Commission, which was later called the Fleishman Commission after its chairman, Manly Fleishman. After a year of work by the Commission, the Puerto Rican Educators Association voiced its concern about the need for the Fleishman Commission to investigate the educational needs of Puerto Rican children in the state. Representatives of the Puerto Rican Educators Association met with members of the Fleishman Commission and pointed out that the Commission had no Spanish-speaking staff capable of interpreting the plight of the Spanish-speaking child in New York State. The PREA was given a grant of $3,000 to conduct a background study for the Commission.[294] The report, "The Education of the Puerto Rican Child in New York (with Special Emphasis on New York City)," was effective in impressing upon the Commission the critical nature of the problems of children of limited English-speaking ability in New York State.[295] The Fleishman Commission's report stated:

> the most distressing incidence of academic failure the Commission has uncovered occurs among a group of children who are handicapped by a language barrier in the classroom—those 160,000 children whose native language is not English and whose difficulty comprehending English significantly impedes successful school performance.[296]

Table 2

DISTRICTS WITH SIGNIFICANT* SSA† STUDENT POPULATIONS: 1971-72

County	School District	SSA	Percent‡	Population§
Chautauqua	Dunkirk	285	8.5	3,542
Erie	Buffalo	1,620	2.4	67,500
	Lackawanna	254	4.5	5,639
Dutchess	Beacon	239	6.7	3,606
Monroe	Rochester	2,140	4.9	43,679
Montgomery	Amsterdam	302	5.9	5,117
Nassau	Freeport	368	4.8	7,660
	Glen Cove	379	7.5	5,057
	Hempstead	200	3.5	5,723
	Long Beach	336	5.3	6,340
New York City		290,789	25.5	1,140,349
Onondoga	Syracuse	172	0.6	28,685
Rockland	North Rockland	930	11.6	8,014
Suffolk	Bellport	185	4.4	4,233
	Brentwood	2,924	13.2	22,155
	Central Islip	626	8.7	7,199
	Huntington	191	2.3	8,283
	Patchoque	539	5.6	9,623
Ulster	Ellenville	180	7.3	2,473
	Wallkill	312	12.8	2,434
Westchester	Peekskill	255	6.3	3,564
	Port Chester	388	8.4	4,624
	Tarrytown	310	10.3	3,012
	Yonkers	1,827	6.1	29,943

*Districts with over 150 SSA students.

†SSA or Spanish-surnamed American.

‡Source: University of the State of New York, "Racial/Ethnic Distribution of Public Students & Staff in New York State 1971-72."

§Source: University of the State of New York, "Survey of Enrollment, Staff & Schoolhousing: Fall 1971," State Education Department.

The *Fleishman Report* went on to highlight the low reading levels and high dropout rate of these children as well as the limited numbers of Puerto Rican and bilingual professional staff in the system. The report finally made a series of proposals to address these needs. It offered recommendations for program design, financing, staffing, and related legislation.[297]

In concluding, the Commission championed the bilingual approach.

> The two basic methods used to overcome English-language deficiencies—English as a Second Language and bilingual education—differ in approach, in strengths and weaknesses.
>
> An exclusively ESL approach gives the child intensive work in English-language skills while he follows his subjects in English as best he can. This method has the advantage of exposing the child to more English and thus facilitates his acquisition of the language. However, there is a strong possibility that, while he is learning English, the student will fall behind in his other subjects, that knowledge of his own language will not be reinforced and that he will be divorced from any positive feeling about his own culture that he might learn through instruction in his own tongue. Further, English as a second language is a high-cost method. It relies on auxiliary teachers to give small-group instruction. In a school system with many thousands of children of limited English-speaking ability such as New York City, an army of such teachers would be required to make the language program effective.
>
> The bilingual approach . . . permits him to receive instruction during the school day in a language and at a level he can understand. Thus, valuable instruction time is not lost while the student is acquiring English skills, and his chances of losing academic ground while mastering a new language are substantially diminished. Bilingual education also enriches learning by encouraging bilingual literacy and reinforcing cultural identity and pride. . . . Furthermore, bilingual education gives the child who cannot yet read an opportunity to learn to break written codes faster and more effectively by allowing him to associate symbols with the language he has been hearing since birth. Finally, bilingual education is less costly than ESL because it relies, basically, on providing additional training for classroom teachers rather than hiring auxiliary teachers and services.
>
> The Commission is convinced that bilingual education, with a strong English-instruction component, is the better method for reaching large numbers of children with limited English-speaking ability. We therefore recommend that districts throughout the state use this approach for all children who have been assessed as having limited English-speaking ability.[298]

Like many other recommendations of the Fleishman Commission, the one urging broad-based implementation of bilingual education was not implemented by either the legislature or the Regents. However, the data compiled by this report and the Commission's recommendations often were cited in litigation documents submitted by the PRLDEF; they both served to demonstrate that educational authorities recognized that children of limited English-speaking ability were "handicapped by a language barrier" from participating fully in the learning process and therefore, they supported Aspira's request for a bilingual program.[299]

However, another tactic—a political coalition—proved to be a more effective strategy for policy change. The first state bill to appropriate funds specifically for bilingual education was passed during the 1972-73 legislative session, as a direct result of the Black-Puerto Rican Caucus exerting pressure on Governor Rockefeller.[300]

Assemblyman Armando Montano, on the assumption that the governor's office would be a more effective route for obtaining funds, met with the governor's representatives. He requested that funds be appropriated from the governor's budget; to support this request, he asked the Puerto Rican Education Task Force[301] to develop a position paper on bilingual education. Assemblyman Montano later met with the governor on the issue and presented the Task Force's report. He also arranged many meetings with key senators and assemblymen in which the Task Force participated.[302, 303] Meetings with the Black and Puerto Rican Caucus solidified their support. When the governor's budget came up for approval, the Caucus held steadfastly for an agreement to allocate $4,000,000 for bilingual education. In the end, one of the provisions under which the Black and Puerto Rican Caucus would support the governor's budget (and probably a couple of key bills) was the allocation of $1,500,000 for bilingual education. The bill into which it was later formulated, A8131, passed the legislature and was signed into law in 1973.[304]

This law, however, did not change New York's English-only policy. Though financially, the law supported bilingual instruction programs for language-minority children. The state legislature, therefore, was indirectly influential in the suit because it provided important documentation regarding the extent of the problems of children with limited English-speaking ability, and it offered support for the specific remedy which Aspira was requesting.

The Regents of the University of the State of New York (The Regents)

The state legislature gives the Regents authority over the University of the State of New York, the most comprehensive educational organization in the world. It has under its supervision all public schools in the state, all secondary and higher educational institutions incorporated in the state, and libraries, private schools, museums, and agencies for education incorporated in the state.

Among their specific powers, the Regents are authorized to assume legislative functions concerning the educational system of the state, to determine the state's educational policies, and to make regulations for carrying out laws relating to education. It is a fifteen-member body named by the State Legislature, which is responsible for carrying out state education law. The presiding member of the Regents is the chancellor. In effect, then,

the Board of Regents is the chief education policy-making body in the state.

It is understandable, in light of New York State's English-only education law, that it was not until 1972 that the Board of Regents issued their first public policy statement acknowledging the need for special educational programs for non-English-speaking children.[305] More than a year prior to this statement, the Regents invited a number of Puerto Rican leaders to participate in a special-session panel discussion held on March 25, 1975[306] on the education of minority children. One panelist at that meeting, Hector I. Vazquez, took a particularly strong position:

> An enormous crisis exists pertaining to the education of one-fourth (1/4) of the school population of New York City. The same situation exists in approximately 200 other school districts throughout the state.
>
> It is a crisis which is not recognized, like an iceberg it lays submerged under an ocean of apathy, indecision and institutional discrimination. . . . We are asking the State Education authorities and the legislature to take emergency steps to assure the right of Puerto Ricans and non-English-speaking pupils to learn.[307]

It is also interesting to note that prior to the release of the Regents' new policy position, the Commissioner of Education, Ewald Nyquist, had been called to testify at hearings held by the United States Commission on Civil Rights on February 14 and 15, 1972. Nyquist had already encountered many pressures and problems with regard to desegregation of the state's schools; he certainly did not need another civil rights issue with which to struggle. He had probably impressed the Regents with the implications of the Hearings of the United States Commission on Civil Rights.

The Regents Policy Statement No. 16, regarding bilingual education, states that:

> The primary goal of the Regents in their bilingual education program is to provide equal education opportunity for non-English-speaking children through activities capitalizing on their proficiency in their native language and developing competence in English. The program affirms the importance of English and at the same time recognizes that the native language and culture of a child can play a major role in his education. There is no experimental substitute for the successful learning experiences gained by non-English-speaking children who are permitted and encouraged to learn in their dominant language.[308]

The Regents' policy statement, however, did not describe a bilingual program model that would best meet the needs of non-English-speaking children. Rather, it offered four categories of bilingual education as a broad framework from which local school districts could design their own programs. The four categories included:

> One: Transitional—Fluency and literacy in both languages are not equally emphasized. Initial instruction, however, is in the native language. The ultimate objective is for the pupil to attain fluency in the second language.
>
> Two: Monoliterate—Listening and speaking skills are developed equally in both languages, but reading and writing skills are stressed in the pupil's second language only. The objective is to get the pupil to think directly in the second language.
>
> Three: Partial bilingualism—Subject matter to be learned in the native language is limited specifically to the cultural heritage of the ethnic group. Other subject areas—scientific, economic, technical—are considered to be within the domain of English. Competence in listening, speaking, reading, and writing in both languages is sought.
>
> Four: Full bilingualism—The equal development of competencies in speaking, reading, and writing both languages, and an understanding of both cultures are the ultimate learning objectives. In all areas except language instruction, both languages are used.[309]
>
> The general categories cited above provide a broad framework within which to develop bilingual programs. Where circumstances do not warrant bilingual instruction, a program for teaching English as a second language should be considered. Every community, however, should be afforded maximum opportunity to go beyond a second language program into bilingual instructional activities.[310]

In urging local school districts to go beyond a second-language program, the Regents defined the responsibility of school districts as follows:

> In any case, where there are approximately 10 or more children of limited English-speaking ability who speak the same language and are of approximately the same age and level of educational attainment, every effort *should* be made to develop a bilingual rather than second language program.[311] (emphasis provided)

The policy statement also established priorities. Among these was the reassignment of funds in the area of vocational education, general education, secondary education, early childhood education, adult education, drug education, and education for the handicapped; the statement further required an increase in the use of Title I and Urban Education funds for bilingual and English as a Second Language programs.[312] The Regents' policy statement was a landmark one. It did not, however, include enforcement mechanisms, guidelines, deadlines, or noncompliance penalties. In its "may" and "should" provisions, it essentially echoed state legislative English-only policy. Nonetheless, this policy was quoted often by parties in *Aspira*. Plaintiffs maintained that it substantiated their claims and that it supported bilingual education as an appropriate remedy.[313] The Board claimed that the policy statement supported its guidelines that no single specific program could be determined the only acceptable remedy and that the Board was conducting programs that fell into all four categories described by the Regents.[314]

The Commissioner of Education

Since 1904, the chief executive officer of the Regents and of the state educational system has been the Commissioner of Education, who is also the Chancellor of

the University of the State of New York.[315] He is appointed by the Regents and serves at their pleasure.

The Regents authorized the Commissioner, as chief administrative officer, to administer the State Education Department (SED) in accordance with statute and the rules and resolutions of the Regents. He has the power to appoint all personnel of the SED and, in addition to the division established by statute, may also establish such other divisions as he feels necessary, subject to the approval of the Board of Regents.

The role of the State Education Department is to oversee the process of education in New York State, to ensure that it is consistent with state law and Regents policy. It also coordinates specific centralized functions and further defines educational policy and procedures. Through this mechanism, the Regents and the commissioner share important governance responsibilities in vital areas such as curriculum, personnel, licensing, and financial distribution.

The commissioner has the power to mandate that school districts address the special needs of children of limited English-speaking ability, if, in his judgment, the right to equal educational opportunity is being denied them.[316] In order to carry out centralized State Education Department efforts in this area, the commissioner has the power to reorganize the Department of Education, subject to the approval of the Regents.[317] This organizational power includes appointment of associate and assistant commissioners as deemed necessary; creation, consolidation, or abolition of divisions and bureaus; appointment of officers and employees; and fixing of their titles, duties and salaries.[318]

The Commissioner of Education has the legal authority to institute proceedings to determine whether existing educational programs for the non-English-speaking are educationally adequate; upon consideration of testimony and other evidence, he is authorized to make decisions regarding what constitutes an appropriate and adequate education program for non-English-speakers must be.[319] The Commissioner of Education has the legal authority to mandate that the local school districts submit plans for providing adequate bilingual-bicultural education programs, and that after his review of such plans, they be put into effect.[320]

There is also some degree of legal assurance; should a determination be made by the Board of Regents and the commissioner, based on sound educational policy, that non-English-speaking children require bilingual-bicultural education, this decision cannot be challenged effectively in the courts.[321] In addition, the Commissioner of Education and the State Department of Education have many opportunities to transfer federal and local funds into bilingual-bicultural education programs. For example, the Department of Education issues pertinent guidelines and must approve local school district applications under Title I, Federal Elementary and Secondary Education Act ($224,928,535 in 1970-71). Furthermore, the Commissioner of Education has the authority to issue mandates that affect local school district expenditure of the large sums of local tax-levy money under their own control.

Ewald Nyquist used only to a limited extent the statutory authority of his office to ensure that children of limited English-speaking ability receive equal educational opportunity. The highest educational officials of other states, however, during this period . . . exercised this authority.[322] For example, Commissioner Pettinger of Pennsylvania, a state with only 18,000 Puerto Rican children, mandated that school districts with twenty or more non-English-speaking students establish bilingual programs that would involve them more effectively in the learning process.[323]

On February 15, 1972, New York State Commissioner of Education Ewald B. Nyquist testified before the United States Commission on Civil Rights.[324] He stated that:

> There is a need for total institutional reposturing . . . in order to incorporate, affirmatively recognize and value the cultural environment of Puerto Rican children. . . . Present findings reflect inequality and a high level of unalleviated distress in education totally inconsistent with our ideals of educational opportunity for all.[325]

Evidence was uncovered at these hearings that another influential high state official—Senator Jacob Javits—had for more than a year pressured Commissioner Nyquist to look into the special educational needs of Puerto Rican and other non-English-speaking children.[326, 327] An indication of his own frustration was the fact that he placed copies of correspondence interchanged between himself and Nyquist into the records of the 1970 *Hearings on Equal Educational Opportunity and the Puerto Rican Children*.[328]

Senator Javits' statement to the United States Commission on Civil Rights was very short but concluded with his judgment that:

> The fact is that Puerto Rican children continue to be deprived of equal educational opportunity. In large part, this is attributable to the persistence of severe English language deficiencies resulting from inadequate financing of bilingual and ESL programs and the unresponsiveness of educational bureaucracies to the special needs of the Puerto Rican child.[329] (emphasis added)

The many letters and interchanges between Javits and Nyquist indicated that Javits' staff had researched the issues regarding the education of the Puerto Rican in New York City and had concluded that "the Puerto Rican and other Spanish-speaking students of New York are obviously being deprived of adequate instruction relevant to their equal needs."[330] Furthermore, among his staff's recommendations were:

> The Office of Education, State Education Department and local Board of Education should jointly agree to earmark at least $10 million in Title I monies for the recruitment, training and employment of Instructional Bilingual Teachers.
>
> If necessary, the State and the Board of Education should be urged by OE to channel increased federal funds to provide equal opportunity for non-English-speaking pu-

> pils, as required by the 1964 Civil Rights Act. Failure to comply might warrant investigation of a possible withholding of federal educational funds.
>
> A percentage of State Urban Education funds, at least equivalent to the percentage of NEs in the City school system (10.6%), should be earmarked for Instructional Bilingual Teachers and other relevant non-English programs. This would increase State inputs for bilingual education to in excess of $7 million.[331]

Senator Javits' correspondence with Nyquist indicates that he urged the commissioner to use his statutory authority. He states:

> I will ask the Education Subcommittee of the Committee on Labor and Public Welfare, of which committee I am the ranking majority member, to consider how equitable treatment of New York's Non-English-speaking student population might be mandated if steps are not taken locally to rectify the situation.[332]

Senator Javits ordered his staff to conduct interviews with the Board of Education, the Office of Education, local school districts, Aspira, and Puerto Rican Forum representatives. The following recommendations for state action were developed and discussed by Javits with Nyquist:[333] (1) The state make a fundamental commitment to the education of non-English-speaking children; (2) The state press for the elimination of rules and regulations that restrict the entry of necessary bilingual personnel into the system; (3) The state issue a policy statement on bilingual education to be implemented as high priority; (4) The state set aside Title I and State Urban Education Funds for bilingual education on the local district level; (5) The state support a program to recruit, train, and place bilingual teachers; (6) The state establish a high-level administrative office within the SED reporting directly to the Commissioner to coordinate statewide bilingual-education efforts; (7) The state provide technical assistance to local school boards; and (8) The state establish a Commission on Bilingual Education.[334]

The similarity between these recommendations and the Regents' "Policy Statement #16: Bilingual Education" is substantial.[335, 336] The community also organized to support these recommendations. The Puerto Rican Education Task Force (PRETF), a committee of the Puerto Rican Inter-agency Council, sought to pressure Commissioner Nyquist to implement these recommendations.[337]

On November 2, 1972, thirty representatives of Puerto Rican communities throughout New York State met with Commissioner Nyquist[338] toward this end. In January, Commissioner Nyquist took the first steps to establish the bilingual commission he and the Regents had suggested.[339] He asked the Puerto Rican Education Task Force to recommend a number of educational leaders among Puerto Ricans and other language-minority groups, broadly representative of the various regions of the state.[340] Members were not named to an Advisory Council[341] until August 1974.[342]

At a meeting between Dr. Thomas Sheldon, Deputy Commissioner of Education, other State Education Department commissioners, and representatives of the PRETF, Dr. Sheldon related that SED would act expeditiously to have bilingual education established as a priority for Title I and Urban Education.[343] This had been one of PRETF's demands.

New York State received $132,553,423.11 in Title I funds in 1971. Of this, only 2.1 percent, or $4,371,-150.00,[344] was spent on English as a Second Language.[345] Of the total public school population of New York State in the 1971-72 school year, 26 percent represented four minority groups: Blacks, Spanish-surnamed Americans, American Indian, and Oriental. If one assumes that this is largely the group for which Urban Education funds are earmarked, then there is a critical question as to whether Puerto Rican children were receiving an equitable portion of these funds. Spanish-surnamed American students constituted 37 percent of the total of minority students, but they received only 6.2 percent of the total of Urban Education funds.[346] Urban Education legislation states: "The amount apportioned to any school district shall be used for locally administered programs[347] for pupils with the special educational needs associated with poverty in accordance with regulations promulgated by the Commissioner."[348]

In a policy memo issued in February 1973 and distributed to all education officials in the state, the SED affirmed that:

> The three program priorities which have been established for compensatory education, Title I, ESEA and Urban Education for school year 1973-4 are bilingual education (as appropriate), reading and mathematics. For those local school districts serving non-English-speaking pupils, their needs in reading and/or mathematics education must be met first.[349]

With regard to other recommendations, however, movement was not quite as rapid. The PRETF continued to press for a statewide plan for the broad-based implementation of bilingual education in the state.[350] There was particular concern regarding:[351] the deplorably small number of bilingual personnel in SED,[352] the absence of an administrative unit or high-level administrator to coordinate bilingual education efforts in the state,[353] and the absence of special state certification for bilingual teachers.[354]

In summary, then, New York State's policies for teaching children of limited English-speaking ability began to shift from an English-only policy in the early 1970s to one that supported (in a compensatory context), but did not mandate or enforce, bilingual education. This shift came about in response to many pressures from a variety of interest groups and individuals, some of which have been treated here.

The Federal Role

Federal policies of the 1960s and 1970s for educating language-minority children were directly at the root of

the 1974 Supreme Court decision in *Lau* v. *Nichols*. That decision was based on Title VI of the Civil Rights Act of 1964 and the guidelines it promulgated. The process of reaching the policy goals of the early 1970s spanned a decade. This section will examine the role that the legislative and executive branches of federal government played in changing policies for educating language-minority children. The role of the courts is treated later in this chapter.

Landmark legislation of the 1960s includes the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Immigration Act of 1965, and the Elementary and Secondary Education Act of 1965. There has been no argument that this federal legislation has had a sweeping effect on American life. Nathan Glazer has discussed its contradictions and negative impact on American life:

> In 1964 we declared that no account should be taken of race, color, national origin, or religion in the spheres of voting, jobs, and education (in 1968 we added housing). . . . Having placed into law the dissenting opinion of *Plessy* v. *Ferguson* that our Constitution is color-blind, we entered into a period of color-and-group-consciousness with a vengeance.[355]

On the other hand, after the signing of the *Aspira* Consent Decree, Luis Alvarez, National Executive Director of Aspira of America, stated:

> We at Aspira regard today's ruling as a landmark on the road to equal educational opportunity for all Puerto Rican children. *Aspira* v. *Board of Education of the City of New York* may go down in history as our equivalent of the *Brown* case. Equally important is the positive federal role in assuring that the Puerto Rican and other Spanish-speaking communities receive recognition of their rights. This is particularly significant at a time when the federal government has shown signs of becoming narrow and parochial.[356]

Certainly views differ as to what the federal role should be and has been. Concern and comment have increased as the effects were felt by the individual in America. (The new national ethnicity[357] may well be a real phenomenon.) Though it is difficult to refrain from going into it, this section does not seek to come to any conclusions, qualitative or quantitative, on the impact of the policies promulgated under the legislation listed. Neither is an attempt made to study its impact on American life in general.

The scope here is to obtain a broader picture of the policy-change process from looking at the role that the federal government has played in the education of language-minority children. The study examines the legislative and executive branches and how each influenced policies regarding the education of language-minority children; it focuses primarily on the Hispanic community, because this is the largest language-minority community and has played a strong political role in bringing about change.

Prior to considering specific federal policies and their implementation, it is important to examine again the 1970 census,[358] which shows that 33.2 million Americans, roughly 16 percent of the population, speak a language other than English as their native language.[359] The largest of these language-minorities are the Spanish-speaking. The educational and political ramifications of the issue of educating language-minority children is obvious in age breakdowns that have been made for the Spanish speaking:

> The majority of Spanish origin persons live in households where Spanish is the current language, as 6.0 million of the 9.2 million persons of Spanish origin, or 65 percent, reported Spanish as the language currently spoken in their home. . . . Among persons of Spanish origin who were five to 19 years old, 64 percent were living in homes where Spanish was the current language.[360]

The scope of the educational problems is clearer however, when one considers that there are many other language-minority groups in the United States, including: Chinese, French, Portuguese, Italian, Greek, Czech, and Polish.

The Legislature

Two laws of direct relevance to *Aspira* and its sister case, *Lau*, are the Civil Rights Act of 1964[361] and Title VII of the Elementary and Secondary Education Act of 1965 known as the Bilingual Education Act of 1967.[362] This section will discuss the substance of these laws and how they have changed educational policy within the context of language-minority children.

In ruling in favor of Lau that federally aided school systems are required to ensure that non-English-speaking children are provided equal educational opportunity, the Supreme Court relied upon HEW regulations exercising authority inherent in Title VI.

Federal law, as it functions here, is best placed into context by first viewing the political movement that brought it about. Federal law is a statement of policy. Whether or not it truly reflects a consensus in American society is probably determined not by its passage but by the amount of funding and the power of enforcement that it provides.

The Civil Rights Act of 1964 was enacted in accord with the national mood resulting from President John F. Kennedy's death. The Act ensures: rights in the area of voting (Title I), the use of public accommodations (Title 110), the desegregation of public facilities (Title III), the desegregation of education (Title IV), the expansion of powers of the Commission on Civil Rights (Title V), nondiscrimination in federally assisted programs (Title VI), and equal employment opportunity (Title VII).

Though each subsection of the law states that discrimination is unlawful on the basis of "race, color, religion, or national origin," the intention of the legislators was clearly to avoid a black-white demarcation. A close inspection of the congressional reports and hearings on the bill clearly supports this. There is certainly an absence of evidence that Puerto Ricans and Chicanos viewed the Civil Rights Act any differently

than most other Americans, that is, as a law for the South. There is equally no evidence that either community substantially organized to support the bill.

Laws, however, are not implemented by Congress. They are interpreted by federal administrative agencies and by the courts. Because of the politics of passing laws, the impact of a law often deviates from the letter of the law and from the intent of the legislature. In the case of the Civil Rights Act, the application of the law *vis-à-vis* the education of language-minority children came later—through executive action.

The United States Congress formally committed itself to a policy of bilingual education in 1967 with the passage of Title VII of the Elementary and Secondary Education Act of 1965, as amended, entitled the Bilingual Education Act:[363]

> In recognition of the special educational needs of the large numbers of children of limited English-speaking ability in the United States, Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies to develop and carry out new and imaginative elementary and secondary school programs designed to meet these special educational needs. For the purposes of this sub-chapter, "children of limited English-speaking ability" means children who come from environments where the dominant language is other than English.[364]

Growing pressure from the Hispanic community, that existing educational programs did not meet the needs of hundreds of thousands of children in the nation's schools, increased the efforts of the federal government to implement more effective ways to educate children fluent in a language other than English. Evidence of the support given the bill on the national level by a variety of interest groups appears in the two volumes of testimony presented at public hearings on the bill.[365]

The passage of the law alone was not enough. Local school districts were not mandated to any extent to implement bilingual education. Funding was critical if local authorities were to be lured into adopting the policy. Former Senator Walter F. Mondale stated initially,

> when the Congress passed the Bilingual Educational Act, educators conservatively estimated that $40 million was needed to do a minimal job in upgrading the education of our non-English-speaking youth . . . no funds were appropriated in that year. In 1969 the Congress appropriated only $7.5 million—enough money to fund adequate programs for less than one percent of the 3,000,000 children who were estimated to be in need of special bilingual educational programs. For the fiscal year 1971, the program authorization was increased to $80 million and the actual appropriation to $25 million—a considerable improvement but still a long way from overcoming the tradition of the dysfunctional education that we have offered to our non-English-speaking population.[366]

Bilingual education under the Act means: "The use of two languages, one of which is English, as mediums of instruction."[367] The enactment of the Bilingual Education Act spawned programs throughout the country and encouraged state legislatures and local municipalities to enact legislation enabling the establishment of bilingual educational programs.[368] The Act was progressive in that it required that monolingual English-speaking children to participate in the programs to the same extent as speakers of two languages.[369] This requirement would seem to support the viability of the program for all children. Funds appropriated under the Act, however, reached only 1 percent of the children in need.[370]

This Act served as a precedent and was particularly important during the process of negotiating remedies in *Aspira* and *Lau*, although the Supreme Court did not rely on it in deciding for plaintiffs in referring to possible remedies. The Bilingual Education Act was important for both suits in arguing in District Courts that English as a Second Language instruction was not an adequate remedy. Federal policy in this regard gave support to a bilingual program remedy;[371] however, its impact was diminished by the absence of research evidence that bilingual programs were making a difference in the educational achievement of children participating in the programs nationally.[372]

The Executive Branch

It falls to the executive branch of Government to assure the implementation of laws, based on the broad interests of the public after due consideration of minority interests.

Minority concerns are interjected in the politics of federal policy-making in a variety of ways. Direct political pressure and power brought about by strong voter-turnout is one way. A minority group can also obtain power through coalitions or by acting as a small margin in a critically close race. For instance, in the 1960s the Chicanos in the Southwest were effective in electing their own officials to local positions and built a political machine that became important to Nixon's 1972 election campaign. An article that appeared before the 1972 election documented the new political power of the Chicano community in the early 1970s.

> Texas and California are two of the critical states that Republican strategists hope to win in the President's re-election campaign. In 1968, Mr. Nixon lost Texas to Sen. Hubert H. Humphrey by fewer than 40,000 votes. GOP strategists figure that if Mr. Nixon had carried an additional 20,000 Mexican-American votes—about 5 percent of the state's Chicano vote at that time—he would have won Texas. Conceivably, Mexican-Americans and other Spanish-speaking voters could make up the balance of political power in Texas, California and Illinois and possibly in other states.[373]

The executive branch is able to respond to pressures from minorities in a variety of ways. It may incorporate their views into policies regulating the implementation of legislative mandates.[374] It can allocate direct funds for programs to support the community. It may respond by naming minority members to staff and to policy- and decision-making positions.

In the late 1960s and early 1970s, the Nixon administration named Chicanos and other Hispanic minorities to key policy positions.[375] These communities were also the recipients of funds. The *Washington Post* article also summarized the 1972 allocation of funds to the Chicano community in the Southwest:

> in addition to the more than $37 million going to the Texas and California regions, over $6 million was earmarked for Region VII, which includes Denver, nearly $2 million for Chicago's Region V and about $1.5 million for the New York and Atlanta regions.[376]

The continental Puerto Rican community did not have a fraction of the political power of the Chicano in the late 1960s and 1970s. Not only did it have no representation at the local event, the Puerto Rican community had only one congressman in the legislature. As the above article shows, a small fraction of the funds reportedly being appropriated for "Spanish-speaking Americans" was going to Puerto Ricans. This disparity, together with differences in the numbers of Puerto Ricans, compared to Chicanos, named to high-level policy- and decision-making positions have been the subject of dispute between these two groups.[377] A national coalition of Puerto Rican organizations, established in 1972, pressured the Nixon administration for more parity in funding and hiring, stating:

> To further alienate Puerto Ricans of programmatic resources, high policymaking positions in governmental agencies are held by Mexican-Americans. As of June 1st, 1972, 28 of the 34 Spanish-surnamed presidential and supergrade appointees were Mexican-Americans from the states of Texas, California, Colorado and New Mexico. There were only four Puerto Ricans, two from New York and two from the Island.[378]

Beginning with the Kennedy administration, executive-branch units were named expressly to respond to pressures from the Hispanic community. These included the Cabinet Committee on Mexican-American Affairs (later changed to Cabinet Committee on the Spanish Speaking) and the HEW Office of Education, Office of Spanish-Speaking Affairs;[379] these mechanisms have been used to bring about changes on behalf of the Spanish speaking.

With regard to the massive financial support given to the Chicano community in 1972, Cabinet Committee Chairman Manuel Ramirez reflected on the potential of such administrative access:

> Ramirez said the funds were scraped up by various government agencies beginning last February after a series of meetings with six regional councils made up of representatives from HUD, HEW, the Office of Economic Opportunity and the Departments of Labor and Transportation. According to Ramirez, there was no formal directive from the White House. He said, however, that at a meeting of Cabinet members with the Cabinet committee on Aug. 5, 1971, the President told federal officials to "get off your duffs" and to take an active interest in directing programs to the Spanish-speaking.[380]

Equitable or not, administrative action brought about the involvement of Hispanics, particularly in the formation of national policy. This was to be true in the area of education as well as civil rights.

Implementation of the policies embodied in the Civil Rights Act is carried out by a cobweb of agencies of the federal government and the U.S. Commission on Civil Rights. The wide distribution of authority is due to the broad scope of the law. The functions of implementing the Civil Rights Act in the area of education are divided among three agencies. The Justice Department has the authority to prosecute school districts in violation of the Civil Rights Act. The Office of Civil Rights of the Department of HEW has the authority to establish regulations and guidelines for school districts to comply with the act and has the enforcement power to cut off federal aid from districts found to be in noncompliance. This is the branch that issued the regulations and guidelines upon which *Lau* was decided.

The Civil Rights Commission does not hold either implementation or enforcement powers. Its efforts are largely to investigate discriminatory practices and to report findings and recommendations to the Congress. It is unlikely that there exists a single court action or study in this area that does not cite one of the commission's numerous reports or hearings. In the early 1970s, it undertook a massive, multimillion-dollar investigative study of educational practices in the Southwest affecting Chicano students.[381] It conducted a similar study in Chicago.[382]

With respect to the use of the powers of the OCR, Martin Gerry, its director, stated:

> Between 1954-1970, neither the courts nor the executive branch seriously attacked either the segregation of Mexican American, Puerto Rican, and Native American children or the insidious discriminatory practices utilized by school districts in the operation of educational programs within schools.[383]

The Department of HEW began to respond to the Hispanic community as a result of organized political pressures from the Southwest and Northeast.[384] In the Southwest, where the largest continental population of Hispanic students reside, Chicanos reacted to being the pawns in school-desegregation conflicts.[385] In the Northeast, reaction by the Puerto Rican community in the late 1960s reflected frustration over the loss of funds to more powerful political groups—Blacks at the local level and Chicanos at the national.[386]

In 1969, there was an indication of interest by federal authorities.[387] Title VI compliance reviews conducted in school districts with large numbers of Spanish-surnamed students "revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils."[388] As a result, on May 24, 1970, the Office of Civil Rights issued a memorandum stating for the first time HEW's policy concerning the "responsibility of school districts to provide equal educational opportunity to national origin minority group children deficient in English-language

skills. . . ."[389] This memorandum was issued after the concerted efforts of the Chicano organization and civil-rights movement in the West pressured for a federal policy statement, stipulating the rights of language-minority children to equal educational opportunity.[390, 391] All four points of the memorandum specifically refer to types of school discrimination related to the lack of English-language skills of children. The four points covered the following areas:[392]

1. Where there are sufficient language problems, school districts must make affirmative efforts to rectify the language deficiency.
2. Assignment to mentally retarded classes and exclusion from college preparatory courses must not be based on criteria which measure English language skills.
3. Tracking to meet the language deficiency should not constitute a permanent track.
4. Adequate notice of school activities should be given to national origin minority group parents in their own language if necessary.[393]

However, in terms of enforcement, the reality is that "the potential threat of the termination of funds is more mythical than real. Up to 1974, there were no reported cases of federal fund cut-offs for noncompliance with guidelines."[394] The responsibility for implementing the May 25 memorandum rests with the Washington and regional offices of the Office of Civil Rights. The regional Office of Civil Rights (OCR) offices process complaints, conduct reviews, and negotiate plans. As of February 1973, virtually all Title VI reviews had been conducted as a result of complaints. By 1973, although thirty school districts had been reviewed by OCR, only fourteen compliance plans had been negotiated. None of the compliance plans submitted before 1971 included goals and timetables for hiring bilingual personnel. A second method OCR can use to enforce compliance with Title VI is to institute administrative proceedings should voluntary negotiations fail. However, prior to 1974, OCR initiated administrative proceedings against only two districts on the grounds of denial of equal educational services. Both districts — Uvalde, Texas, and Boston, Massachusetts, had refused to negotiate compliance plans.[395]

In addition to these limitations, there have been even greater concern about the fact that so much progress in changing policies for educating language-minority children is dependent on a "memorandum." A typical example is a quote from an article by a Chicago legal defense attorney, who expressed concern that:

> HEW, an organ of the executive, the branch of government most given to capricious and arbitrary behavior because of its line of command principle not found in other branches of government, could, without a moment's notice, rescind the May 25 Memorandum because it is expedient to do so, or indeed for no reason at all.[396, 397]

Title VII is administered by the Office of Education, Office of Bilingual Education. Its staff is responsible for monitoring the implementation of programs funded under the Bilingual Education Act; with consistently increased federal funding since 1970, the staff has increased in size. The policy impact of programs funded on local levels is largely determined by the Act's program regulations, among which is the requirement that the funded district gradually assume the burden of personnel salaries. The potential of obtaining funds during critical economic periods is incentive enough even to local policy-makers, who would not otherwise support bilingual education enough to implement bilingual programs.

The Role of the Courts

Policies of racial and ethnic exclusivism in the American public school system have changed significantly in the past generation. In recent years, this change has included a reassessment of policies determining the language of instruction.

In response to growing documentation of the underachievement of racial and ethnic minority students and as a result of protest movements initiated by these excluded minorities, the highest federal and state courts have fashioned legal doctrines to defend the unconstitutionality of discrimination. Litigation based on racial discrimination was a forebear of other forms of civil rights litigation. In the field of education, this led to the Supreme Court theory of the affirmative constitutional obligation of school systems to cease discriminatory practices. The fashioning and implementation of new practices has been an equally difficult task. This is a grey area in which the courts are still struggling to define their own powers, obligations, and limits.

The 1954 *Brown* v. *Board of Education* Supreme Court decision and the Civil Rights Act of 1964 had little impact on the education of language-minority children until the 1970s. This was because a series of legal principles had been developed by the courts during the two decades that preceded *Lau*. These principles did not encompass any consideration of linguistic or cultural variables. Among the principles established were: the "public interest," "equal protection," "suspect classification," "past pattern of discriminating," and "equality of educational opportunity."

Based on these principles is the argument that education is in the public interest because without an adequate education, an individual may become dependent on society for support.

Education in the nineteenth century became a function of the state through the establishment of free common schools. The courts came into the picture when schools became compulsory. The concept of education being in the public interest was enlarged as a result of the application of the "equal protection" clause of the Fourteenth Amendment. This principle of "equality" passed through a series of stages and, when combined with the principle that education was a "public interest" and therefore states had a responsibility to provide "general educational opportunity," it resulted in the

concept of the right to "equal educational opportunity."[398, 399]

Based on this theory, the courts have in recent years engaged extensively in educational policy-making, to the degree that some observers have suggested that[400] "During the past two decades, lawmakers have reshaped the realm of educational policy.[401] Their involvement has been both applauded[402] and criticized. For instance, Glazer maintains that the role of the courts in most cases has gone beyond "what the constitution can reasonably be thought to allow or require in the operation of this complex process."[403]

In *Aspira*, the Board and Aspira reached an agreement, thereby precluding the court's direct intervention in fashioning the remedy agreed upon, a bilingual instructional program.[404] As documented in previous sections of this chapter, the Puerto Rican community had been substantially unsuccessful in changing either its socio-economic condition or the quality (or quantity) of education received by its children through other traditional avenues of policy change, its relative powerlessness in the political arena brought it to seek change through the courts.

The courts have been used to bring about change for other groups, including Blacks and Chicanos.[405] The rights of groups to pursue their goals through the courts was upheld by the United States Supreme Court in *NAACP*[406] v. *Button*. Justice Brennan, giving the opinion of the Supreme Court in the case, describes the importance and the function of the courts for groups like Aspira:

> . . . litigation is thus a form of expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts and under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.[407]

The courts in the 1970s did not directly address the question of the policy of language instruction,[408] particularly regarding language-minority children,[409] it was in the 1970s, however, that judicial principles of equal educational opportunity were broadened to enfold the constitutional rights of children of limited English-speaking ability within the equal-opportunity principle.[410] Regarding the exclusion of children resulting from policies of English as the language of instruction, the Supreme Court skirted constitutional issues and relied, in *Lau*, solely on HEW regulations.[411]

Between 1970 and 1974, the courts established a number of guidelines that were important to the litigation of educational language exclusion cases[412] and ethnic minority segregation cases.[413, 414] *Cisneros* in 1970 resulted in a federal district court ruling for the first time that Mexican-Americans constituted an "identifiable ethnic minority with a past pattern of discrimination." This was significant because just as Blacks had been able to use constitutional and statutory protection against discrimination, this ruling opened the door to other ethnic minorities, this including Puerto Ricans, whose socioeconomic plight[415] and underachievement[416] had been well documented.

In a later case, *United States* v. *Texas*,[417] the same court ruled: "We see no reason to believe that ethnic segregation is any less detrimental than racial segregation." This ruling particularly affected Chicanos in the Southwest, since many desegregation cases already were being litigated or were in preparation at that time. As is standard practice in such cases, the courts required school districts to draw up plans that would eliminate such discriminatory practices. But school districts were ineffective in formulating such plans; they continued to consider Black and Hispanic schools desegregated. The Supreme Court ruled against this practice in *Keyes* v. *School District No. 1*,[418] declaring that "Negroes and Hispanos in Denver suffer identical discrimination in treatment when compared with treatment afforded Anglo students." When remanded to the lower court for fashioning of relief, the final order included an educational plan for bilingual-bicultural education.

Therefore, the mandate of special instruction for children of limited English-speaking ability had two roots.

The following chapter discusses fully the *Lau* and *Aspira* arguments and the principles relevant to language exclusion. However, it is important to note at this juncture that the litigation described above, together with *Lau* and *Aspira*, jointly established the legal framework which permitted children of ethnic and language minorities to enjoy equal educational opportunity in American schools. It is, nevertheless, not within a pluralistic context that these courts have acted but rather an assimilationist one. The courts have not made bilingual education a right. Nor, it would seem, are they the proper policy-change mechanism to obtain such an end. They have served only as a mechanism to protect minority rights. They ensure access to and participation in the educational process. It could be argued, then, that the courts have not served to change the national policy that English is the language of instruction in American schools, but have consistently supported program designs in which children who are of limited English-speaking ability are given access to curriculum material through the medium of their first language.

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[1] Lau v. Nichols, 414 U.S. 563 (1974) [hereinafter referred to as "Lau" in footnotes and as "*Lau*" in the text].

[2] Aspira of New York, Inc., et al. v. Board of Education of the City of New York, et al., 72 Civ. 4002 S.D.N.Y. 1974 (MEF) [hereinafter cited as "Aspira" in footnotes and "*Aspira*" in the text].

[3] *Title VI of the Civil Rights Act of 1964*, *Statutes at Large 68*, sec. 252 (1964), *U.S. Code*, vol. 42, sec. 2000-1 (1970).

[4] J. Stanley Pottinger, Director, Office of Civil Rights, Department of Health, Education and Welfare, Memorandum to School Districts with More Than Five Percent National Origin–Minority

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5 72 Civ. 4002 Consent Decree (S.D.N.Y. August 29, 1974) [hereinafter cited as Aspira, Consent Decree].

6 The term "consent decree" is an agreement between two litigating parties. In this particular case, but not in all cases, the court maintained the authority to hear and resolve disputes concerning the adequate implementation of this decree.

7 For a summary of the consent decree, see Chapter II of this study.

8 John Thomas Thompson, *Policymaking in American Public Education: A Framework for Analysis* (Englewood Cliffs: Prentice-Hall, 1976), pp. 16-18.

9 Diane Ravitch, *The Great School Wars: New York City, 1805-1973: A History of the Public Schools as a Battlefield for Social Change* (New York: Basic Books, 1974), p. xiii.

10 For instance, Jack H. Schuster, "An 'Education Congressman' Fights for Survival: Congressman Brademas' Bid for Reelection, 1968," in *Policy and Politics in America: Six Case Studies*, ed., Allan P. Sindler (Boston: Little, Brown, 1973), pp. 201-42, particularly pp. 223-32; and Patricia Cayo Sexton, *The American School: A Sociological Analysis* (Englewood Cliffs, N. J.: Prentice-Hall, 1967), pp. 21-36. But David Rogers, *110 Livingston Street: Politics and Bureaucracy in the New York City School System* (New York: Random House, 1968), argued that interest groups had little power compared to the internal bureaucracy.

11 Thompson, *Policymaking*, p. 9.

12 Arnold H. Leibowitz, *Educational Policy and Political Acceptance: The Imposition of English as the Language of Instruction in American Schools* (Washington, D. C.: ERIC, 1971).

13 Ibid., p. 3; He maintains that there has been a "reversal" in the policy. The author, however, will show that what has resulted is more of policy accommodation on the continental United States.

14 Ibid., p. 2.

15 For discussions of the importance of these factors see: Thompson, *Policymaking*, p. 16 and Roald F. Campbell et al., *The Organization and Control of American Public Schools*, 2nd ed. (Columbus, Ohio: C. E. Merrill, 1970), p. 39.

16 Shirley Brice Heath, *Telling Tongues: Language Policy in Mexico–Colony to Nation* (New York: Teacher's College Press, 1972). Heath illustrates how language decisions were made during the history of Mexico. She concludes that decisions are made primarily on political and economic grounds and reflect the values of those in power. Also see Patricia L. Engle, "The Use of Vernacular Languages in Education: Language Medium in Early School Years for Minority Language Groups," *Review of Educational Research* 45 (Spring 1975):283-325; reprint ed. (Arlington, Va.: Center for Applied Linguistics, 1975). Engle has studied the conflicts, research, and issues of national instructional language planning in many countries having substantial language-minority groups. The language-minority groups in question were not immigrant groups.

17 Leibowitz, *Educational Policy*, p. 2.

18 Joshua A. Fishman, *Language Loyalty in America* (The Hague: Mouton, 1956).

19 The term "native language" refers to the language that is particular to that of the group culture with which one is identified. It is used commonly in lieu of the terms "first language" and "mother tongue," which are not broad enough to encompass those individuals, members of a language-minority ethnic group, who may be American-born English-speakers but still speak or identify with the language of their group.

20 Herbert Teitelbaum and Richard J. Hiller, "Bilingual Education: The Legal Mandate," *Harvard Educational Review* 47 (May 1977): 138-70, discuss language policies relevant to voting, government services, criminal justice, and employment from a legal perspective.

21 Also see Francesco Cordasco, "The Children of Immigrants in the Schools: Analogues of Educational Deprivation," *Journal of Negro Education* 42 (1973):42-53, in Francesco Cordasco, ed., *Bilingual Schooling in the United States: A Sourcebook for Educational Personnel*. New York: McGraw-Hill, 1976, pp. 27-37; Theodore Andersson and Mildred Boyer, *Bilingual Schooling*, vol. 1.

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25 See: Leibowitz, *Educational Policy*, pp. 6-9; Fishman, *Language Loyalty*; Andersson and Boyer, *Bilingual Schooling*.

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36 Cremin, *Transformation*, pp. 68-75.

37 Leonard Covello, *The Social Background of the Italo-American Child: A Study of Southern Italian Family Mores and Their Effect on the School Situation in Italy and America*, ed. Francesco Cordasco (Leiden, The Netherlands: E. J. Brill, 1967), p. 411.

38 Leibowitz, *Language Policy*, pp. 2-3.

39 Francesco Cordasco, "The Puerto Rican Child in the American School," *Journal of Negro Education* 36 (Spring 1967):181-86, in Francesco Cordasco and Eugene Bucchioni, eds., *The Puerto Rican Community and Its Children on the Mainland: A Source Book for Teachers, Social Workers and Other Professionals* (Metuchen, N. J.: Scarecrow Press, 1972), p. 341.

40 Emilio L. Guerra, "The Orientation of Puerto Rican Students in New York City," *Modern Language Journal* (October 1949):415-20, in Cordasco and Bucchioni, *Community and Children*, p. 349.

41 Ravitch, *School Wars*, p. 6. Ravitch, Moynihan, and other sources did not distinguish the immigrant from the in-migrant.

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43 Ibid.

44 Handlin, *The Uprooted*, p. 8.

45 Oscar Handlin, *The Newcomers: Negroes and Puerto Ricans in a Changing Metropolis* (Garden City, N. Y.: Doubleday Anchor, 1962), p. 9.

46 Ravitch, *School Wars*, p. 11

47 Handlin, *The Newcomers*, p. 9.

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49 Ibid., p. 21.

50 Handlin, *The Uprooted*, pp. 259-60.

51 Ravitch, *School Wars*, pp. 112-15.

52 Ibid., p. 108.

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54 Ravitch, *School Wars*, p. 158.

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56 Cremin, *Transformation*, pp. 8-9.

57 Ibid., p. 9.

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[61] *New York Times*, 20 March 1905, quoted in Ravitch, *School Wars*, p. 169.

[62] The term "retardation" in the literature of this period has a more negative connotation than the term "lower achievement" but was not defined in specific psychological and neurological terms as it is today.

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[64] Ibid.

[65] Nathan Glazer and Daniel P. Moynihan, *Beyond the Melting Pot: The Negroes, Puerto Ricans, Jews, Italians, and Irish of New York City*, 2nd ed. (Cambridge: MIT Press, 1970), p. 14.

[66] Ravitch, *School Wars*, p. 172.

[67] Ibid.

[68] Ibid., p. 168.

[69] Ibid., p. xiv.

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[76] Memorandum of the Board of Education and the Chancellor at 10, 72 Civ. 4002 (S.D.N.Y. May 23, 1974) (unreported Memorandum).

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[79] J. Hernandez-Alvarez, "The Movement and Settlement of Puerto Rican Migrants Within the United States, 1950-1960," *International Migration Review* 2 (Spring 1968):40-43.

[80] Board of Education of the City of New York, *The Puerto Rican Study 1953-1957: A Report on the Education and Adjustment of Puerto Rican Pupils in the Public Schools of the City of New York*, J. Case Morrison, Project Director (New York: Board of Education, 1958), pp. 167-68.

[81] Nathaniel Kantrowitz, "Social Mobility of Puerto Rican Migrants: Education, Occupation, and Income Changes Among Children of Migrants," *International Migration Review* 2 (Spring 1968):55.

[82] Guerra, "Orientation of Students," pp. 351-52. There existed no standardized test or uniform criteria for determining whether a child had sufficient mastery of English.

[83] It was difficult to assess readiness. The principal's report suggested that "no standardization tests should be given to any children who have not had at least five years of attendance in our schools until such time as valid tests are available." See Leonard Covello, "Recommendations Concerning Puerto Rican Pupils in Our Public Schools," New York City, May 1, 1953 (mimeographed), in Cordasco and Bucchioni, *Community and Children*, p. 262.

[84] See pp. 18-19 for a discussion of the availability of services for children with limited or no English-speaking ability disclosed by a survey conducted by the Puerto Rican Forum.

[85] Guerra, "Orientation of Students," p. 351.

[86] Mayor's Committee on Puerto Rican Affairs in New York City, "Puerto Rican Pupils in American Schools," Report of the Subcommittee on Education, Recreation and Parks, pp. 12-20 (mimeographed), in Cordasco and Bucchioni, *Community and Children*, pp. 252-57.

[87] Ibid., p. 253.

[88] Guerra, "Orientation of Students," p. 352.

[89] Ibid., pp. 351-52.

[90] Advocates of the "immersion" approach have continually surfaced in the literature. For the most current work, at this writing, in support of it see Noel Epstein, *Language, Ethnicity and the Schools: Policy Alternatives for Bilingual-Bicultural Education* (Washington, D. C.: George Washington University, 1977).

[91] Mayor's Committee, "Puerto Rican Pupils," p. 257.

[92] Jenkins, "Bilingual Education," p. 8.

[93] Guerra, "Orientation of Students," p. 352.

[94] Ibid., p. 351.

[95] Mayor's Committee, "Puerto Rican Pupils," p. 252. "El barrio" is the Spanish term for "the ghetto."

[96] Ismael Rodriguez Bou, *Problemas de Educacion en Puerto Rico* (San Juan: Universidad de Puerto Rico, 1947), p. 288.

[97] Ibid.

[98] Mayor's Committee, "Puerto Rican Pupils," pp. 253-56.

[99] Ibid., p. 258.

[100] Ibid., p. 254.

[101] Ibid., p. 261.

[102] Frank Mayans, Jr., "Puerto Rican Migrant Pupils in New York City Schools: A Comparison of Two Methods of Instructional Grouping on English Mastery and Attitudes," (Ph.D. dissertation, Columbia University, 1953), pp. 9-10.

[103] Ibid., p. 263.

[104] Memorandum of the Board of Education and the Chancellor at 11, 72 Civ. 4002 (S.D.N.Y. May 23, 1974) (unreported Memorandum).

[105] Cordasco, "The Puerto Rican Child," p. 342; U.S., Congress, Senate, *Hearing of the Select Committee on Equal Educational Opportunity*, 91st Cong., 2nd sess., 1970, remarks of Hector Vazquez, p. 3733; Kantrowitz, "Social Mobility," pp. 54-55; Eugene Bucchioni, "Home Atmosphere and Success in School: A Sociological Analysis of the Functioning of Elementary Education for Puerto Rican Children" (Ph.D. dissertation, New School for Social Research, 1965), pp. 55-56; in Cordasco and Bucchioni, *Community and Children*, p. 278; U.S., Congress, Senate, *Hearings of the Select Committee on Equal Educational Opportunity*, 91st Cong., 2nd sess., 1970, statement of Antonia Pantoja, p. 3668; U.S., Commission on Civil Rights, *Hearing Before the United States Commission on Civil Rights: New York, February 14, 1972*, particularly statement of Senator Jacob K. Javits, p. 615.

[106] Cordasco, "The Puerto Rican Child," p. 343 and Board of Education, *The Puerto Rican Study*, pp. 15-25.

[107] Jenkins, "Bilingual Education," pp. 8-10. This foreign-language restriction was declared unconstitutional in 1923, but the "English-only" law continued to exist in many states. In New York, it persisted until 1970, although provision was made for instruction in Spanish in experimental programs; Heinz Kloss, *Bilingual Tradition*.

[108] It is difficult to assess the number of students involved. In Mayor's Committee, "Puerto Rican Pupils," p. 252, the number of students was placed at over 25,000 in 1951, comprising 26 percent of the school population. And, while Langlois estimated that 14.2 percent of the population was Puerto Rican in origin, this was not until 1958. Only in 1967 did Langlois place the Puerto Rican student population at 22.1 percent. Margaret S. Langlois, *Trends in the Ethnic Composition of the Pupil Population of the New York City Schools–1958-1967* (New York: Board of Education, April 1969), p. 5.

[109] Ibid., p. 2.

[110] Board of Education, *The Puerto Rican Study*, p. 39.

[111] Ibid., p. 169.

[112] Puerto Rican Educators Association, "The Education of the Puerto Rican Child in New York," report presented to the New York State Commission on the Quality, Cost and Financing of

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113 Ibid.

114 The report also concluded that Puerto Rican children learn a good deal of English by associating with their peers. It is therefore recommended that the two groups of children be allowed to mix in classroom activities in order to facilitate the learning of English. It is probably reasonable to assume that this is a pedagogical approach, because it was consistent with both the melting-pot myth and theories of integration.

115 Board of Education, *The Puerto Rican Study*, p. 59.

116 Ibid., p. 204.

117 Ibid., p. 239.

118 Board of Education, "Summary of Puerto Rican Study," in Cordasco and Bucchioni, *Community and Children*, p. 361.

119 Ibid.

120 Ibid., p. 360.

121 Children with Retarded Mental Development.

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125 Cordasco and Bucchioni, *Mainland*, pp. 114-15.

126 Ibid., p. 117.

127 Fishman, *Language Loyalty*, p. 236.

128 Langlois, *Trends in Ethnic Composition*, p. 3.

129 Cordasco, "The Puerto Rican Child," p. 342.

130 Loretan, "Problems in Education," pp. 374-77.

131 See Cordasco, "The Puerto Rican Child," p. 343; and Covello, "Recommendations," p. 261.

132 Ravitch, *School Wars*, pp. 240, 244.

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134 *New York Times*, May 2, 1963.

135 Board of Education of the City of New York, Minutes of Meetings, Statement of Policy of Board of Education, adopted 28 April 1964, p. 602.

136 U.S., Congress, House, *Hearing Before the General Subcommittee on Education and Labor on Bilingual Education* (H.R. 9840 and H.R. X0224), testimony of Dr. Bernard E. Donovan, 90th Cong., 1st sess., 1967, reprinted in New York City Board of Education press release #451-66/67, New York, July 7, 1967. (Mimeographed.)

137 U.S., Department of Health, Education and Welfare, Office of Education, *Programs Under the Bilingual Education Act (Title VII, Elementary and Secondary Education Act): A Manual for Project Applicants and Grantees* (Washington, D.C.: Government Printing Office, 1970), p. 1.

138 Memorandum of the Board of Education and the Chancellor at 14, 72 Civ. 4002 (S.D.N.Y. May 23, 1974) (unreported Memorandum).

139 Jenkins, "Bilingual Education," pp. 34-35, 63.

140 Ibid., p. 37.

141 Board of Education of the City of New York, *Survey of Pupils Who Have Difficulties with the English Language* (New York: Board of Education, pub. n. 334 P.N.S. 406, 1970), p. 22.

142 Jenkins, "Bilingual Education," p. 51.

143 Ibid., p. 35.

144 Lester Seelig, Deputy Superintendent, Board of Education of New York City, Memorandum: "Implementation of the Design for the Improvement of Educational Opportunities for Puerto Rican Pupils in New York City Schools," New York, May 1969. (Personal files.)

145 Ibid. The only increase in personnel was: "During 1968-69 an additional 62 cluster teacher positions were added to relieve ESL coordinators from the burden of covering preparation periods." (Idem., p. 2) These lines were not additional ESL bilingual teacher positions.

146 H. I. Vazquez, in U.S., Senate, *Hearings on Equal Educational Opportunity*, pp. 3727-33.

147 Ibid.

148 Hector I. Vazquez, "Discrimination Against Puerto Rican Professionals and Puerto Rican Pupils in New York City Public Schools," statement presented at the *Hearings on the Minority Hiring Practices of the Board of Education of the City of New York* of the New York City Commission on Human Rights, New York, January 27, 1971, pp. 2-3. (Mimeographed.)

149 Ibid., p. 2.

150 Richard Greenspan, "Analysis of Puerto Rican and Black Employment in New York City Schools," New York, Puerto Rican Forum, May 1970, p. 1 (Mimeographed.) (Personal files.)

151 H. I. Vazquez, in U.S., Senate, *Hearings on Equal Educational Opportunity*, p. 3734.

152 Jenkins, "Bilingual Education," p. 23.

153 Memorandum of the Board of Education and the Chancellor, 72 Civ. 4002 (S.D.N.Y. May 13, 1974) (unreported Memorandum).

154 H. I. Vazquez, "Discrimination," p. 11.

155 Greenspan, "Analysis of Employment," p. 2. The study did not break down the term "White" into its constituent groups.

156 Ibid., pp. 2-7.

157 H. I. Vazquez, "Discrimination," pp. 17-19.

158 Ibid., pp. 17-18.

159 Idem, in U.S., Senate, *Hearings on Equal Educational Opportunity*, pp. 3730-31. See above for a discussion of practices related to the administration of reading tests to children of limited English-speaking ability.

160 Ibid.

161 Ibid., p. 3731.

162 NE is the abbreviation for non-English-speakers.

163 Little ESL instruction was being offered even for children with the least English-speaking ability. See Dennis Allee and Manuel del Valle, Memorandum to Senator Jacob K. Javits, in U.S., Commission on Civil Rights, *Hearing*, pp. 624-27.

164 Jenkins, "Bilingual Education," p. 24.

165 H. I. Vazquez, "Discrimination," pp. 9, 17.

166 English as a Second Language (ESL) is a program designed to teach English language skills to speakers of other languages. The goal of ESL instruction is to develop speaking, listening, reading and writing skills. It is distinguishable from bilingual education (which usually includes an ESL component) in that this is its sole function. Bilingual education, as defined here, also includes subject area instruction in the first language, continuous development of first language skills, and materials and methodologies which are supportive and consistent with the learner's culture.

167 Allee, Memorandum, in *Hearings*, p. 619.

168 Appendix A, table 17 gives a summary by district of the survey's results.

169 This is one of many terms used to describe children of limited English-speaking ability.

170 The researcher has used Title VII criteria to determine whether a program can be termed "bilingual."

171 Memorandum of the Board of Education and the Chancellor, 72 Civ. 4002 (S.D.N.Y. May 23, 1974) (unreported Memorandum).

172 Interviews with Luis Nieves, formerly Executive Director of Aspira of New York, Princeton, New Jersey, March 17 and 22, 1977.

173 Jenkins, "Bilingual Education," p. 58.

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175 Hernan LaFontaine, "A Theoretical Model for the Implementation of the Elementary School Curriculum Through Bilingual Education," New York, 1938. (Mimeographed.)

176 The other program was for speakers of Chinese.

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180 See: John H. Bunzel, "Pressure Groups in Politics and Education," *National Elementary Principal* (January 1964); pp. 12-16; and Patricia Cayo Sexton, *Spanish Harlem: Anatomy of Poverty* (New York: Harper & Row, 1965).

181 Thompson, *Policymaking*, p. 5.

182 Community "politics" with regard to bilingual education has not unanimously been viewed as a positive factor in the change process. See: Francis Willard von Maltitz, *Living and Learning in Two Languages* (New York: McGraw-Hill, 1975), pp. 3-4, in which the author explains why he views these processes negatively and why "the subject of educational politics will be left largely untouched." (p. 3) Also, see Albert Shanker, Testimony in U.S., Commission on Civil Rights, *Hearing*, pp. 102-17.

183 For evidence of the community's organization and activity regarding educational issues see: U.S., Commission on Civil Rights, *Hearing*; Sexton, *Spanish Harlem*, particularly "Education: Broken Ladder to Success"; and Alfredo Lopez, *Puerto Rican Papers: Notes on the Re-emergence of a Nation* (Ind./New York: Bobbs Merrill, 1973), particularly pp. 109-25, 295-352.

184 Island of Puerto Rico.

185 Since Puerto Ricans are citizens of the United States, the term "continental" is used to differentiate territory other than that of the island. Some authors use the term "mainland"; many authors do not make the qualification. The latter may be the least appropriate, since it may perpetuate the view of Puerto Ricans as non-citizens.

186 Leibowitz, *Educational Policy*, pp. 81-104 and Aida Negron de Montilla, *Americanization in Puerto Rico and the Public School System 1900-1930* (Ph.D. dissertation, New York University; Rio Piedras, Spain: Editorial Edil, 1970), p. 10.

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188 Paquita Vinas de Vazquez, "The Teaching of English in Puerto Rico," *TESOL Newsletter*, vol. VI, no. 3 (Washington, D.C.: American Language Institute, Georgetown University, April 1973).

189 Leibowitz, *Educational Policy*, p. 81.

190 Ibid., p. 85.

191 Ibid.

192 The term "subject of English" is the learning of a language as one of many subjects within an educational curriculum as differentiated from "English as a medium of instruction" or "English as the language of instruction."

193 International Institute of Columbia Teachers College, "A Survey of the Public Educational System of Puerto Rico" (1926), pp. 30-31, 105; cited by Osuna, *A History of Education in Puerto Rico* (Rio Piedras, Puerto Rico: Editorial de la Universidad de Puerto Rico, 1949), pp. 357-63.

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197 Celeste Benitez de Rexach, address delivered at the Seventh Annual Convention of Teachers of Other Languages, San Juan, Puerto Rico, May 10, 1973, Department of Education, Commonwealth of Puerto Rico. (Mimeographed.)

198 Leibowitz, *Educational Policy*, p. 4.

199 Ibid., p. 104.

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201 Plaintiffs' Memorandum to the Court at 13, 72 Civ. 4002 (S.D.N.Y. May 23, 1974) (unreported Memorandum).

202 Hernan Rodriguez, "Some Problems of Bilingualism in Acculturation of Puerto Ricans in New York City" (Master's Thesis, The City College, 1965), pp. 139-141.

203 Joshua A. Fishman et al., *Bilingualism in the Barrio* (The Hague: Mouton, 1971).

204 U.S., Commission on Civil Rights, *Puerto Ricans*, Chapter II.

205 Among the most recognized are: Joseph P. Fitzpatrick, *Puerto Rican Americans: The Meeting of Migration to the Mainland* (Englewood Cliffs, N.J.: Prentice-Hall, 1971), pp. 10-21; Elena Padilla, *Up From Puerto Rico* (New York: Columbia University Press, 1958); Clarence Senior, *Strangers Then Neighbors: From Pilgrims to Puerto Ricans* (New York: Freedom Books, 1961); for migration patterns see U.S., Commission on Civil Rights, *Puerto Ricans*, pp. 19-35.

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207 Clara Rodriguez, "The Ethnic Queue in the United States: The Case of the Puerto Ricans" (Ph.D. dissertation, Washington University, 1973), Chapter 3.

208 Stan Steiner, *The Islands: The Worlds of the Puerto Ricans* (New York: Harper & Row, 1974); Pete Hamill, "Coming of Age in Nueva York," *New York*, November 24, 1969, pp. 33-47; Kal Wagenheim, *A Survey of Puerto Ricans on the United States Mainland in the 1970s* (New York: Praeger, 1975).

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242 Ravitch, *School Wars*, pp. 233-404.

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256 Herman Badillo, quoted in *Hemos Trabajado Bien*, p. 9.

257 Hector I. Vazquez, "Puerto Rican Americans," p. 71.

258 U.S., Commission on Civil Rights, *Puerto Ricans*, p. 109.

259 Steiner, *The Islands*, p. 392.

260 Ravitch, *School Wars*, p. 389.

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265 Fear of making national coalitions with Chicanos on the part of Puerto Ricans is reflected in *Hemos Trabajado Bien*, p. 48.

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267 Note that the governor of the state holds no direct authority; however, he is able to exert influence. During Governor Rockefeller's administration (1958-1974) this was substantial, inasmuch as his party was in the majority in the legislature for a period of twenty-seven years. The governor's influence over higher education has been recognized. His attempt to gain greater power over education is evidenced in his endeavors to pass laws changing the number, term, and process of naming the Regents and the Board of Higher Education. He also proposed the naming of an Education Inspector General. The state budget, the governor's budget, and the power of the veto are also tools he uses to influence educational policy.

268 See: New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education in New York State, *Report*, 3 vols. (1972) (hereinafter referred to as *Fleishman Report*), which reported that the community played little or no role in educational policy-making in the state and made major recommendations for policy change but relatively none for the revision of the policy-making structure. It stated:

> We conclude that it would not be beneficial to the state, the public, students or educators to propose a drastic reorganization of school governance at the present time. Thus, for example, we do not recommend any basic change in the relative duties and responsibilities of the Governor, the Legislature, the Board of Regents or the State Education Department in the fields of educational policymaking or administration. *Fleishman Report*, Vol. III, 11.3.

269 New York, *Constitution*, Art. XI, Sec. 1.

270 State laws cannot be in conflict with the Constitution of the United States and are therefore open to interpretation by the courts.

271 "Spanish-surnamed American" includes Mexican, Central American, South American, Cuban, Puerto Rican, Latin American, or other Spanish-speaking origin.

272 See: Ewald Nyquist, Statement and Testimony, in U.S., Commission on Civil Rights, *Hearing*, p. 295.

273 The 1970 U.S. Census estimated 872,471 (acknowledged to be an underestimate) Puerto Rican residents in New York State compared to a total 960,000 Spanish-speaking population in the state. See: U.S., Department of Commerce, Bureau of the Census, *1960 Census of Population: Subject Reports—Puerto Ricans in the United States*, PC(2)-D, 1963, p. viii and *1970 Census of Population: Subject Reports—Persons of Spanish Ancestry—Supplementary Report*, PC(S1)-30, February 1973.

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275 Ibid., Table 2, p. 4.

276 Ibid.

277 Interview with Senator Robert Garcia, State Senate, Albany, New York, October 29, 1976.

278 The researcher could identify only two bilingual programs in the state operating outside New York City in 1971: ESTUDIA in Buffalo and ADELANTE in Rochester.

279 See: "The Unknown Citizens: A Special Issue on Rochester's Puerto Rican Community," *Upstate New York*, 18 June 1972, pp. 5-8.

280 New York, Education Law, Art. 65, sec. 3204. Also see: "Historical Note."

281 The only other law that provided for the special educational needs of children of limited English-speaking ability was Education of the Handicapped, which defined such children as handicapped. However, prior to 1972 funds for bilingual instruction had not been allocated under this statute. Senator Garcia maintained that the community refused to compete with physically handicapped children for funds.

282 By 1967, there was a number of bilingual programs that in effect were in statutory violation using Spanish as the language of instruction in public schools. This included the first bilingual school (grades 1-6) in the Bronx.

283 "Educators Back a Bilingual Plan," *New York Times*, 23 March 1973.

284 New York, *Education Law*, Art. 65, sec. 3204:2.

285 In 1972, the law was further revised to give the Commissioner of Education authority to extend the three years to six. Ibid. (McKinney, 1972).

286 Senator Garcia Interview.

287 During the 1972 State Legislative Session, State Senator Robert Garcia (D., Bronx) introduced bills S4610, 1563, 10552, and 9439, which would require that bilingual education programs be established in all districts with twenty or more students of a common language background who also possess "limited English-speaking ability." S4610 was modeled on a similar statute enacted in Massachusetts in early 1972.

288 United Federation of Teachers, Legislative Memorandum to New York State Senate, Calendar No. 832, S4610, updated by Shannon and Marsh, 1972-73 legislative session, Albany, n.d.

289 Senator Robert Garcia (D., Bronx).

290 Assemblymen Montano, Nine, Ramos.

291 "Puerto Rican Prospect: 10% of Population, 0% of Political Power," *New York Times*, 15 October 1969.

292 Heinz Kloss, *Laws and Legal Documents Relating to Problems of Bilingual Education in the United States* (Washington, D. C.: ERIC–CALS, 1971).

293 For an updated follow-up study see: Lawyer's Committee, *Bilingual Educational Legislation*.

294 "New Study Confirms Educational Slaughter of Puerto Rican Children," *Interracial Books for Children*, vol. 4, nos. 1, 2, reprint, p. 11.

295 Puerto Rican Educators Association, "Puerto Rican Child," p. 11.

296 *Fleishman Report*, 6.36.

297 Ibid., 6.48-.55.

298 Ibid., 6.48-6.49.

299 Plaintiffs' Memorandum of Law Regarding the Educational Programs Appropriate and Necessary Pursuant to the Mandate of Lau v. Nichols, 72 Civ. 4002 (S.D.N.Y. May 23, 1974, (unreported Memorandum).

300 Interview with Assemblyman Armando Montano, State Assembly, Albany, New York, January 19, 1977.

301 The Puerto Rican Education Task Force was a federally funded program under the chairmanship of Jose A. Vazquez. It was a project of the Puerto Rican Interagency Council (PRIAC).

302 Interview with Jose A. Vazquez, formerly of Puerto Rican Education Task Force, New York, October 29, 1976.

303 A number of interviews uncovered the fact that the Puerto Rican Education Task Force held the first statewide Puerto Rican legislative caucus in Albany to support the work of Garcia and Montano. (See: "Educators Back Bilingual Plan," *New York Times*.) It brought together over two hundred Puerto Rican educators representative of many cities in the state.

304 Administratively known as allocation 720.

305 The Regents of the University of the State of New York, *Bilingual Education: A Statement of Policy and Proposed Action* (Albany, N.Y.: State Education Department, August 1972).

306 It should be noted that in the history of the Regents a Puerto Rican has never been named. This changed in 1975, when Jorge Batista, Esq., was named after much debate.

307 Hector I. Vazquez, "A Demand for Adequate Education for Puerto Ricans," presentation made at panel discussion on the education of minority children at special meeting of the Board of Regents of the State of New York, Albany, March 25, 1971 (Mimeograph, The Puerto Rican Forum, n.d.) (Aspira of New York files.)

308 Regents, Policy Statement No. 16, p. 7.

309 Ibid.

310 Ibid., pp. 8-9.

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312 Ibid., p. 12. This was very important at Title I and Urban Education funds were substantial.

313 Plaintiffs' Memorandum of Law Regarding the Educational Programs Appropriate and Necessary Pursuant to the Mandate of Lau v. Nichols, 72 Civ. 4002 (S.D.N.Y. May 23, 1974) (unreported Memorandum).

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315 John P. Lomenzo, *Manual for the Use of the State of New York* (Albany, N. Y.: Office of the Secretary of State, 1969).

316 New York, *Education Law*, secs. 207, 301, 305.

317 New York, *Education Law*, secs. 102-104.

318 Ibid.

319 New York, *Education Law*, secs. 207, 301, 305.

320 New York, *Education Law*, sec. 310.

321 Matter of Vetere v. Allen, 251 N.Y.S. 2d 480, aff'd 258 N.Y.S. 2d 77.

322 Included with New York among areas in which school administrations have not assumed a strong role is Chicago. See: USCCR, *Bilingual Bicultural Education: A Privilege or a Right, May 1974; and Puerto Ricans in the Continental United States*, October 1976, which states

> In Illinois bilingual education is supported almost exclusively by State funds. State funds for bilingual education in the 1972-73 school year totaled approximately $2.4 million. Public Law 78-727, which became effective in September 1973, mandates bilingual education by July 1, 1976, in attendance zones having 20 or more students whose first language is other than English. However, Illinois school districts are making little progress to prepare for bilingual education. Efforts to recruit bilingual personnel still have not been fully undertaken. The Chicago Board of Education has no affirmative action plan with goals and timetable for hiring Hispanic teachers. (p. 113)

323 John C. Pettinger, Secretary of Education, Commonwealth of Pennsylvania, Department of Education, "Transitional Bilingual Education Program School Administrators," Memorandum No. 491, 10 March 1972.

324 These hearings investigated discrimination against Puerto Ricans in New York City in housing, employment, and education.

325 Ewald B. Nyquist, Statement in U.S., Commission on Civil Rights, pp. 523-33.

326 Senator Javits was one of the members of Aspira's Board of Governors in the 1960s. He was also a member of the Board of the Puerto Rican Legal Defense and Education Fund at the time of its incorporation.

327 Also note that it was at Senator Javits' request that the Senate held the 1967 *Hearings on Equal Educational Opportunity for Puerto Rican Children*. These were the first of their kind in the community's continental experience: U.S., Congress, Senate, Select Committee on Equal Educational Opportunity, *Hearings*

REFERENCES – CHAPTER I (Continued)

of the Select Committee on Equal Educational Opportunity Part 8–Equal Educational Opportunity for Puerto Rican Children, 91st Cong., 2nd sess., 1967 (Washington, D. C.: Government Printing Office, 1970), p. 2:3683.

328 U.S., Commission on Civil Rights, *Hearing*, pp. 617-67.

329 Ibid., p. 616.

330 Dennis H. Allee and Manuel del Valle, Memorandum to Jacob K. Javits, Senator, "Instruction for Non-English Speaking Puerto Rican Pupils in New York City Public School System," in Ibid., pp. 636-38.

331 Ibid., p. 637.

332 Jacob K. Javits, Senator, to Hon. Ewald B. Nyquist, Commissioner of Education, New York State Education Department, 18 February 1971, in Ibid., pp. 643-44.

333 Ewald B. Nyquist, President of the University and Commissioner of Education, to Senator Jacob K. Javits, Albany, New York 15 April 1971, in Ibid., p. 648-49.

334 Dennis H. Allee, Executive Assistant to Senator Jacob K. Javits, Memorandum to Jacob K. Javits, Senator, Re: "Educational Problems of Non-English-Speaking Children–Recommendations for State Action," 30 March 1971 in Ibid., pp. 655-664.

335 Regents, Policy Statement No. 16.

336 Ewald B. Nyquist, President of the University and Commissioner of Education in a letter to Senator Jacob K. Javits, 15 April 1971, responds to these recommendations, stating in part:

> I intend to establish an advisory commission which would address itself to the problems of bilingual education, and I would expect one of the results to be a Position Paper published under the imprimatur of the State Board of Regents. (in *Hearing*, p. 648.)

337 Jose A. Vazquez, Chairman, Puerto Rican Education Task Force, to Ewald B. Nyquist, New York State Commissioner of Education, New York, 6 November 1972. (Personal files of Jose A. Vazquez.)

338 Nyquist had not agreed to meet with the group until Senator Robert Garcia intervened on their behalf. Interview Jose A. Vazquez.

339 Jose A. Vazquez, Chairman, Puerto Rican Education Task Force, to Ewald B. Nyquist, New York State Commissioner of Education, New York, 1 February 1973. (Personal files of Jose A. Vazquez.)

340 Ibid.

341 Ewald B. Nyquist, President of the University and Commissioner of Education, to Isaura Santiago, City University of New York, Albany, 9 August 1973. (Personal files.)

342 J. A. Vazquez Interview related that the PRETF had requested that a "commission with a specific mandate be named rather than an ad-hoc advisory council."

343 Jose A. Vazquez, Chairman, Puerto Rican Education Task Force, to Thomas D. Sheldon, Deputy Commissioner, New York State Education Department, Albany, 14 November 1972. (Puerto Rican Education Task Force, New York, files.)

344 Ewald B. Nyquist, Statement, p. 9.

345 Ibid.

346 Ibid.

347 The new section of the law for 1973-74 school year states: "including reading, mathematics, bilingual education and such other programs as may be deemed necessary by such school districts."

348 New York Legislature, Senate, Proposed Bills S6519-A.8084, May 17, 1973. Not enacted.

349 Irving Racheck, New York State Education Department, Memorandum: "Program Priorities 1973-74 Title I ESEA and Urban Education," Albany, February 14, 1973. (Personal files.)

350 J. A. Vazquez Interview. A five-year statewide plan was developed by the group and acted upon by the Regents in 1974.

351 J. A. Vazquez and see: Puerto Rican Education Task Force, "Recommendations Submitted by the Puerto Rican Community to the New York State Board of Regents," New York, 13 October 1972. (Mimeographed in Aspira of New York files.)

352 Administrative and professional staff of SED of Puerto Rican background was 0.3% in 1971 and 0.2% in 1972. Ewald B. Nyquist, Commissioner, New York State Education Department to all Department Employees Re: 1972 Report on the Occupations, Job Status and Ethnic Characteristics of Employees in New York State Agencies, Albany, March 1973. (Personal files.)

353 In 1972 the Bilingual Education Unit had only two full-time professional personnel.

354 Regents, Policy Statement No. 16.

355 Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality* (New York: Basic Books, 1975), p. 31.

356 Aspira of America, Press Release, New York, August 29, 1974.

357 See: Andrew M. Greeley, *Ethnicity in the United States: A Preliminary Reconnaissance* (New York: John Wiley, 1974); Nathan Glazer and Daniel Moynihan, eds., *Ethnicity: Theory and Practice* (Cambridge: Harvard University Press, 1975); and Michael Novak, *The Rise of the Unmeltable Ethnics* (New York: Macmillan Publishing Co., 1971, 1972, 1973).

358 A report by USCCR has found that the census undercounted the population of persons of Spanish-speaking background by "appreciably more than 7.7 percent." It argues that the importance of the use of such data with regard to voting rights, federal assistance programs and equal employment opportunity predicates the need for changing procedues for the 1980 census. U.S., Commission on Civil Rights, *Counting the Forgotten: The 1970 Census Count of Persons of Spanish Speaking Background in the United States* (Washington, D. C.: U.S. Government Printing Office, April 1974).

359 U.S. Department of Commerce, Bureau of the Census, *United States Census of Population: 1970, Vol. 1, General Social and Economic Characteristics–United States Summary*, PC(1)-C1, June 1972, Tables 146, 147.

360 Idem., *1970 Census of Population: Subject Reports–Persons of Spanish Origin in the United States*, P-20, no. 250 (April 1973), p. 1.

361 *Civil Rights Act of 1964, U.S. Code*, Vol. 42, sec. 2000d (1970).

362 *Bilingual Education Act of 1967, Statutes at Large* 81 (1968), *U.S. Code* Vol. 20, sec. 880b (1968).

363 Senators Edward Kennedy (D.-Mass.) and Alan Cranston (D.-Ca.) introduced a bill called the *Bilingual Education Reform Act of 1974*, which declares that bilingual-bicultural education is the most desirable form of education. This bill was passed in a modified form and signed by President Gerald Ford. For a complete history of this Act see: Schneider, *Revolution, Reaction or Reform*.

364 *Elementary and Secondary Education Act of 1965*, as amended, *Bilingual Education Act of 1968, Statutes at Large* 81, sec., 792 (1968).

365 U.S., Congress, Senate, Committee on Labor and Public *Welfare, Hearings Before the Special Subcommittee on Bilingual Education on S.428, A Bill to Amend the Elementary and Secondary Educational Agencies in Establishing Bilingual American Education Programs and to Provide Certain Other Assistance to Promote Such Programs*, 90th Cong., 1st sess., 1967, *Part I*, May 18, 19, 26, 29, and 31, 1967. Printed for the use of the Committee on Labor and Public Welfare (Washington, D. C.: Government Printing Office, 1967).

366 Walter F. Mondale, "National Education of the Spanish Speaking: The Role of the Federal Government," *Elementary Principal*, L (November 1970)2:117-119.

367 *Bilingual Education Act of 1967, Statutes at Large* 81 (1968).

368 For a list of the state laws providing for various models of first-language instruction see: Plaintiffs' Memorandum of Law Regarding the Educational Programs Appropriate and Necessary Pursuant to the Mandate of Lau v. Nichols, 72 Civ. 4002 (S.D.N.Y. May 23, 1974) (unreported Memorandum).

369 The extent to which this was followed is questioned by a recent study of Title VII program impact. See: U.S., Comptroller General, *Bilingual Education: An Unmet Need; Report to Congress*, 1976 (n.d.), distributed by New York State Education Department, Bilingual Unit. (Mimeographed.)

370 Ibid.

371 Plaintiffs' Memorandum of Law Regarding the Educational Programs Appropriate and Necessary Pursuant to the Mandate of Lau v. Nichols at 29, 72 Civ. 4002 (S.D.N.Y. May 23, 1974).

372 Though this chapter was sought to establish the background of *Aspira* prior to its filing in 1972, it is important to note here that

REFERENCES – CHAPTER I (Continued)

subsequent to 1972 other laws have been passed which support bilingual education as a remedy or a viable alternative see: *Bilingual Manpower Training Act, Statutes at Large*, vol. 87 (1973); *Educational Professions Development Act, Statutes at Large*, Vol. 86 (1972); *Emergency School Aid Act, Statutes at Large*, Vol. 86 (1972).

373 "U.S. Aid Gushes to Chicanos as Election Nears," *Washington Post*, 22 August 1972.

374 The United States Commission on Civil Rights (an independent body but appointed by the President), which derives its powers from the Civil Rights Act of 1964.

375 Ibid.

376 *Washington Post*, 22 August 1972.

377 National Puerto Rican Coalition, "Position Paper Relating to the Present Method of Allocating Funds for the Spanish-Speaking Community by Governmental Agencies," Washington, D.C., n.d. (Mimeographed.)

378 Ibid., pp. 3-4.

379 Puerto Ricans have also criticized the absence of Puerto Ricans in these two offices. See: Antonia Pantoja, Remarks in *Hearings of Select Committee on Equal Educational Opportunity–Part 8*, p. 3686.

380 *Washington Post*, 22 August 1972.

381 U.S., Commission on Civil Rights, *Mexican-American Study*, 5 vols. (Washington, D.C.: Government Printing Office, April 1971 to February 1974.)

382 Idem, *A Better Chance to Learn: Bilingual-Bicultural Education*, Pub. 51 (May 1975); reprint ed. (New York: The University of the State of New York, the State Education Department, January 1976.)

383 Martin H. Gerry, "Cultural Freedom and the Rights of La Raza," March 3, 1972, PRLDEF files, p. 4. (Mimeographed.)

384 Weinberg, *Minority*, p. 286.

385 See: Cisneros v. Corpus Cristi Independent School District, 5 Cir. 1972, 467 F. 2d 142, 148 (en banc), cert. denied, 1973, 413 U.S. 920 93 S.CT. 3053, 37 L. Ed. 2d 10-11 and United States v. Texas Education Agency, 5 Cir. 1976, 532 F 2d 380-403.

386 Aspira held a national conference in 1968 partly in an effort to gain national prestige and to make coalitions with Chicanos.

387 At this point the Bilingual Education Act had been passed and Chicanos and Puerto Ricans were lobbying for the appropriation of funds for enforcing the Act, which, of course, was just as important as passing the law.

388 Pottinger, HEW, Memorandum, 25 May 1970.

389 Ibid.

390 Note that it was on May 26, 1976, that the District Court ruled that the rights of *Lau* plaintiff children had been satisfied. See: Lau v. Nichols, Order at 2 (Civ. No. C-7-627 LHB, N.E. Conf. May 26, 1970) (App.).

391 See: J. Rangel and Carlos Alcala, "Project Report: De Jure Segregation of Chicanos in Texas Schools," *Harvard Civil Rights-Civil Liberties Law Review* 7 (March 1972), pp. 307-91.

392 Pottinger, HEW, Memorandum, 25 May 1970.

393 See: Carlos M. Alcala et al., "Legal Significance of *Lau*," paper presented to participants at *Lau* Conference, n.d., p. 20, PRLDEF files. (Mimeographed.) (hereinafter referred to as C. Alcala et al.), in which it is stated that the memorandum issued had included three additional clauses. The original one has been developed by Leon Pannetta and the subsequent draft by J. Stanley Pottinger. The three compliance standards omitted included the following violations:

- –Failure to undertake affirmative recruitment and development through in-service programs of teachers, counselors, and administrators who possess a sensitivity for and understanding of the cultural background of the minority pupils.
- –Failure to include in the curriculum courses which recognize and illustrate the contributions made to the development of this country by the forebearers of the district's minority pupils.
- –Failure to provide bilingual personnel in schools with significant Spanish-speaking enrollment and in other district contact positions.

394 Stephen D. Sugarman and Ellen G. Widess, "Equal Protection for Non-English-Speaking School Children: *Lau* v. *Nichols*," *California Law Review* 62 (January 1974):157-83.

395 C. Alcala et al., "Legal Significance of *Lau*," p. 33.

396 Ibid., p. 20.

397 Though the HEW Memorandum is important because it established a standard, some new laws have included bilingual regulations. See: *The Equal Educational Opportunities Act of 1974, Statutes at Large* 88, sec. 515 (1974), U.S. Code, Vol. 20, sec. 1703, which codifies the requirements of law and may serve to enlarge its application to all school districts whether or not they are recipients of federal assistance. "The failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by the students in its instructional programs" will be construed to constitute a denial of an equal educational opportunity.

398 John C. Hogan, *The Schools, the Courts, and the Public Interest* (Lexington, Ky.: D. C. Heath, 1974), pp. 1-4.

399 In 1973 the Supreme Court ruled that education was not a right. San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973).

400 Thompson, *Policymaking*, pp. 83-94.

401 David L. Kirp and Mark G. Ydof, *Educational Policy and the Law: Cases and Materials* (Berkeley, Ca.: McCutchan, 1974).

402 Myers, *Minority*, p. 327.

403 Glazer, *Affirmative*, p. 129.

404 It must be noted that though the Board agreed to sign the consent decree, the decree is prefaced by resolutions of the Board, acknowledging that it had discriminated against Spanish-speaking children of limited English-speaking ability.

405 Thompson in *Policymaking*, p. 84, f.n. 25, gives a list of the many other groups and organizations "that resort to litigation as a means of obtaining their preferences in school policies."

406 National Association for the Advancement of Colored People.

407 NAACP v. Button, 83 S.C. 328 (1963); cf. NAACP v. Alabama ex. rel. Flowers, 12 L. Ed. 2d 325 (1963).

408 For a full treatment of cases concerning language policies in public and private schools and the development of case law in the area see: Teitlebaum and Hiller, "The Legal Mandate."

409 See: Alcala et al., "The Legal Significance of *Lau*."

410 For a discussion of constitutional principles argued in *Lau*, see William E. Johnson, "The Constitutional Right of Bilingual Children to an Equal Educational Opportunity," *Southern California Law Review*, 47:943-97.

411 For a discussion of the application of these principles see: Sugarman and Widess, "Equal Protection."

412 The three cases establishing precedents in this area are *Lau*, *Serna* (Serna v. Portales Municipal Schools, 351 F. Supp. 1279 (N.D. Mex. 1972), aff'd., 499 F. 2d 1147 (10th Cir. 1974), and *Aspira*.

413 The Mexican community has used the courts as policy-change agents far more frequently than Puerto Ricans. Before 1972 and the founding of the PRLDEF, there is no evidence of a suit brought about by a group in the community seeking the upholding of civil rights in New York City. By 1974 LUAC, a leading Chicano organization, had instituted at least 200 such suits.

414 Prior to 1972, Puerto Rican children as a group had not been class plaintiffs in desegregation litigation.

415 U.S., Commission on Civil Rights, *Puerto Ricans*.

416 For a comparison of Puerto Rican children to Black children by Ewald Nyquist, Statement in *Hearing*, where he suggested that socio-economic factors alone should make groups comparable. But Puerto Ricans achieve less, he concluded, because of language.

417 See United States v. Texas, 342 F. Supp. 24 (E.D. Tex. 1971), aff'd per curiam, 446 F. 2nd 518 (5th Cir. 1972).

418 Keyes v. School District No. 1 Denver, 313 F. Supp. 61 (D Colo. 1970), 413 U.S. 189 (1973).

CHAPTER II: HISTORY AND SUBSTANTIVE ISSUES OF *ASPIRA* v. *BOARD OF EDUCATION OF THE CITY OF NEW YORK*

References for Chapter II begin on Page 67

Introduction

The following history of *Aspira* v. *Board of Education* is a reconstruction of the forces, processes, and conditions that interacted to bring about the filing of the suit. Particular effort is made to present the claims and arguments made by both parties, Aspira and the New York City Board of Education (the Board); these are critical to a full understanding of the educational policies incorporated in and generated by the consent decree. The history is particularly relevant to other community groups or school districts in the country that may be grappling with issues related to the education of children of limited English-speaking ability.

This study contributes to the field of public education by suggesting the means by which a diverse and fragmented ethnic group undertook and sustained a class action suit and the difficulties it and the public school system of New York City faced in implementing court mandated change. It places language-of-instruction policies in New York City schools within a historical, theoretical and practical framework.

Material for this chapter was obtained from: interviews, the personal files of some of those interviewed, the author's personal files, the internal files of the PRLDEF—including documents recorded but not entered into the record during litigation—the internal records and correspondence of Aspira of New York and Aspira of America, public documents of the Board of Education of the City of New York (the Board), newspapers, federal and state published documents, other published materials, and, finally, the research literature.

Litigation documents are relied upon heavily in this chapter because a unique aspect of the process of litigation is that it offers a continuous view of the position taken by each of the two parties involved. In terms of the articulation of arguments and positions, it should be noted that there are also drawbacks. The litigation process places certain limitations on both parties. It is, at minimum, difficult to delineate at any given point exactly what these limitations are or, indeed, whether they are biased toward one party. In any case, some of these limitations are inherent in the legal process. For instance, a plaintiff complains, yet he carries a substantial portion of the burden of proof. Similarly, a defendant and any specifically named representatives must respond, but within the parameters of the law and the specific complaint. There are external limitations as well. Aspira and the PRLDEF are community-based agencies that, in terms of resources, cannot be compared to the Board and the New York City Office of Corporation Counsel.

This history of the lawsuit summarizes the substance of claims, questions, and evidence submitted by both Aspira and the Board of Education, as well as court memoranda, opinions, and statements of record on key issues. The history is approached from the period prior to the filing of the suit and concludes with the signing of the agreement between both parties, the consent decree.

History of the Suit

An Idea Germinates

In late 1970, Cesar Perales, then the Director of the Williamsburg Legal Services Corporation, a Division of Community Agency for Legal Services (CALS), attended a meeting called by Aspira.[1] Among others attending the meeting called by Maria C. Mercado, former Director of Aspira's Scholarship and Loan Center, was Dr. Antonia Pantoja, the founder of Aspira and many other Puerto Rican self-help organizations.

The purpose of the meeting was to develop strategies for promoting bilingual education within the public school system. Some participants suggested organizing community pressure groups around issues and activities involving administrators and legislators. Dr. Pantoja raised questions about the potential of involving the courts in obtaining equal educational opportunity for language-minority children. She believed that investing the community's time and resources in designing and lobbying for legislation was a poor strategy in New York State, because the Puerto Rican community was poorly organized and the state was dominated by upstate Republican interests. She argued that in light of the history of civil rights litigation and the establishment of the United States Office of Civil Rights, either a concerted effort on a national level to pressure the federal government to enforce federal civil rights regulations or the preparation of specific court cases might prove to be a superior strategy.[2]

Cesar Perales continued to consider the questions and concerns raised at the meeting. He discussed the possibilities and ramifications of civil rights litigation for language-minority children with John L. Gray, Esq., Executive Director of CALS, and David Rudenstine, an

attorney for CALS. Gray supported the idea of litigation on behalf of such children. His own interest in the educational rights of language-minority students had been sparked by a colleague's wife, who was professionally involved in the educational system. She had shared with him her impressions of visits to bilingual and monolingual instructional programs and her deep concern for those children of limited or no English-speaking ability who did not have the benefit of bilingual instruction.[3]

Gray and Rudenstine investigated the case law related to the education of language-minority children and conducted initial research on the experience of language-minority children in New York City schools. In September 1971 they returned to meet with Dr. Luis Nieves, Executive Director of Aspira.[4] Dr. Nieves reiterated Aspira's interest in such a suit and offered the agency's resources; he obtained their commitment to provide legal consultation and representation.[5] Andres Torres, Aspira's Director of Research, was assigned to work closely with the attorneys during those first months. He was to aid in researching various aspects of the educational and socioeconomic experience of Puerto Ricans in New York City.[6]

Identifying Plaintiffs

Beginning in 1971 and throughout 1972, Aspira proceeded to gather research data on the educational experience of Puerto Rican students in New York City schools. This was a difficult task because of Aspira's limited research capacity.[7] In addition, Aspira found inconsistencies in the data it was able to obtain.[8]

The process of identifying children and parents who would be willing to participate in the suit was also a major task. Having decided to file suit by December 1971,[9] the agency set about orienting its staff to the goals and legal principles involved in the suit. This was necessary if the staff was to be successful in identifying those who were representative of Puerto Rican children in the New York City public schools allegedly by being denied equal educational opportunity. Characteristics of such children had been defined by the criteria established for potential plaintiffs.

It was vital to obtain the full support of the parents of the children thus identified. This made the role of the staff worker a more complex one. It was the Aspira staff that bore the responsibility of identifying youngsters whose experience typified that of the Puerto Rican child in New York City public school. The data culled would substantiate Aspira's claim, as a potential plaintiff, that this minority's children were being denied equal educational opportunity. Parents often were unversed in the issues and entertained many fears and doubts, requiring sensitive response to their feelings on the staff worker's part. Aspira decided that only fully informed and committed parents could be involved in what was expected to be a very long and difficult process.[10] The search for individual plaintiffs delayed the filing of the suit.[11]

The PRLDEF

As the process of identifying plaintiffs and researching the case proceeded, another idea was also coming to fruition. A group of young Puerto Rican attorneys, including Cesar Perales, Jorge Batista, and Victor Marrero, was working to establish a Puerto Rican community agency that would provide critically needed legal services to the community and which would undertake a national effort to ensure Puerto Ricans equal and fair treatment under the law. As a result of their efforts, the Puerto Rican Legal Defense and Education Fund (PRLDEF) was founded in June 1972.

The board of directors of the new organization was to include Jorge Batista and Victor Marrero, members of Aspira's board of directors. Other members included Senator Jacob Javits, Congressman Herman Badillo, Bronx Borough President Robert Abrams, and many other prominent politicians and attorneys who had demonstrated their concern for the well-being of the Puerto Rican on the mainland—particularly in the area of education.

Cesar Perales and Herbert Teitelbaum, the first legal director and staff attorney for the PRLDEF, began to work with CALS attorneys Rudenstine and Hiller, the individual plaintiffs identified by Aspira. Perales and Teitelbaum also continued to research the case. The PRLDEF soon assumed the major responsibility for preparing the case and representing the plaintiff. The announcement of the impending suit was made on June 28, 1972, at a press conference that concurrently announced the establishment and funding of the PRLDEF.[12]

HEW Office of Civil Rights Advised Against the Suit

In June 1972, the Office of Civil Rights (OCR) attempted to discourage Aspira and CALS with regard to filing the pending suit because OCR was planning a proceeding of its own against the Board.[13] OCR is the arm of the Department of Health, Education and Welfare (HEW) charged with enforcing the 1964 Civil Rights Act and the May 25, 1970, memorandum that details obligations of school districts that are receiving federal aid in educating national origin minority group children.[14]

Four major areas of concern, regarding compliance with Title VI of the Civil Rights Act of 1964, are the subject of the memorandum:[15]

> "1. Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the education program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.
>
> "2. School districts must not assign national origin minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin minority group children

access to college preparatory courses on a basis directly related to the failure of the school system to teach English language skills.

"3. Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

"4. School districts have the responsibility adequately to notify national origin minority group parents of school activities which are called to the attention of the other parents. Such notice, in order to be adequate, may have to be provided in a language other than English."

In a letter to the Harvard Center on Law and Education, CALS attorney Oscar Chase relayed HEW objections to the *Aspira* suit: "The Office of Compliance of HEW, however, has asked us not to file because they are going to institute a compliance proceeding. . . ."[16]

The impending HEW investigation and compliance proceeding were in response to complaints by Hispanic and other racial and ethnic groups in hearings of the Civil Rights Commission in New York held in February 1972.[17] Senator Jacob Javits had pressed for an investigation of bias against Puerto Ricans, citing a 57 to 65 percent school dropout rate in areas of greatest Puerto Rican concentration.

HEW feared that if the Aspira suit were filed, the court might intervene and deprive HEW of jurisdiction over the matter inasmuch as judicial procedures take precedence over administrative ones. This objection was an indication of pending conflict between the administrative and judicial branches of the federal government.

Although it attempted to dissuade the PRLDEF lawyers from filing the suit, OCR indicated that a similar proceeding in Boston had been successful in obtaining a bilingual program.[18] Aspira decided not to halt its plans to file the suit because it felt that OCR would be investigating on behalf of all minority groups; this might not meet the needs addressed by the Aspira suit, which was to be filed specifically on behalf of Puerto Ricans.[19] Moreover, the litigation process offered Aspira the hope that it would have a voice in the design or substance of the relief ordered by the court if it won the case. The OCR, on the other hand, had no Puerto Rican staff member in a decision-making capacity. According to Yolanda Sanchez, Chairperson of the Puerto Rican Inter-Agency Council (PRIAC), the community could expect to have little, if any, voice in the compliance proceedings.[20]

The Suit: Claims and Arguments

The Suit Is Filed

The court process commenced with the filing of the summons and complaint in the United States District Court by the PRLDEF and CALS attorneys on September 20, 1972.[21] The complaint was brought on behalf of fifteen children and their parents. Aspira of America was named as a plaintiff, in addition to Aspira of New York, in order to give the suit national scope. This strategy was in the interest of all children or other groups throughout the country who shared similar educational difficulties. It was expected that the case's outcome could then embrace in equality the greatest number or "class" of children in the court's program of "relief."[22]

Two classes of children were represented by the PRLDEF:

"The first class consisted of over 170,000 students who:
"(a) attended the public schools of the City of New York,
"(b) spoke, read, wrote and comprehended the English language with substantial difficulty or not at all,
"(c) primarily spoke the Spanish language, and (d) were not receiving any educational services taking into account their linguistic needs.

"The second class consisted of about 12,000 students who:
"(a) attended the public schools of the City of New York,
"(b) spoke, read, wrote and comprehended the English language with substantial difficulty or not at all,
"(c) primarily spoke the Spanish language, and (d) were receiving some educational services intended to take into account their linguistic needs but which services were inadequate."[23]

The question of the description or the definition of the children who were bringing the suit proved to be a point of contention between the attorneys and Aspira. Aspira felt that New York City Board of Education's policies and practices served to maintain Puerto Rican students in linguistic, cultural, and socioeconomic deprivation. In keeping with the goal of including the broadest possible group of children, *Aspira* felt that the designation "children having English-language deficiencies" was the most encompassing term; it was hoped that this description would prove applicable to the tens of thousands of Puerto Rican children functioning below capacity. Support for this position was found in Chancellor Harvey Scribner's own testimony, given at the Puerto Rican People's Hearings on May 15, 1972. He stated that:

> Approximately 95,000 of the Puerto Rican students and approximately 22,600 of the other Spanish-speaking students have difficulty with the English language. In a system of education when English is the language of instruction and the medium of communication, *the student who is not fluent in English obviously is at a severe disadvantage when it comes to learning.*[24] (emphasis added)

The complaint purported to establish the Board of Education's obligation to provide compensatory programs to all of those children. CALS and PRLDEF attorneys, however, suggested that a stronger defense could be made for children who were non-English speaking. Both then agreed on the description "children who speak, read, write and comprehend the English language with substantial difficulty or not at all and primarily speak the Spanish language."[25] This was not to be the end of the issue. It continued to be pivotal

during litigation and negotiation in preparation for the consent decree.

The Complaint

The complaint filed with the court by Aspira and the parents and children involved maintained that:

> Plaintiffs and the members of the class they represent are Puerto Rican and other Spanish-speaking persons who speak English poorly or not at all. They are linguistically, culturally and historically different from the dominant culture in New York City. Yet the defendants have failed to recognize these differences in designing and implementing educational services and courses of study for plaintiffs. Specifically, they have failed to take into account the plaintiffs' inability to speak and understand English, and learn in classes conducted in the English language. Moreover, the defendants have not effectively taught the plaintiffs and their classes the English language. The failures of the defendant public officials have been catastrophic. The rates of illiteracy, semi-literacy, dropout and truancy in public schools for plaintiffs and their classes are shocking.[26]

In summary, the suit claimed that:

> "a. Puerto Rican children of limited or no English-speaking ability had been denied equal educational opportunity;
>
> "b. the Board of Education and its administrators had discriminated against these children on the basis of their national origin and ethnicity;
>
> "c. the Board of Education and its administrators were causing these children irreparable injury, as evidenced by the community's low employment and standard of living;
>
> "d. the Board of Education and its administrators violated Title VI of the Civil Rights Act, 1964, the regulations promulgated thereunder, and the equal protection clause of the Fourteenth Amendment of the United States Constitution."[27]

The Complaint's Request of the Court

In addition to requesting that the United States District Court require the New York City Board of Education to provide bilingual programs for all children in need of them, the complaint sought to have the court issue an injunction preventing the continuance of the alleged violations of the equal protection clause of the Fourteenth Amendment, Title VI of the 1964 Civil Rights Act, and the HEW May 1970 regulations.

To achieve these ends, the complaint asked the court to require the Board to develop a plan by a specified date. There were precedents for such "plans" in much of the school integration litigation that preceded *Aspira;* the importance of planning for public educational policy change had repeatedly been reinforced by the courts. However, the insistence on a plan was also an early indication to the Board and the court that Aspira was determined to influence the nature of the relief that it sought. The complaint also specified the basic elements of the plan and a procedure for its evaluation. This would take the burden of pedagogical judgment out of the court and place it in the hands of experts. The complaint asked the court to

> establish a panel of recognized experts in the field of education of Spanish-speaking, non-English speaking students, to evaluate the plan submitted by the defendants to the court, and to recommend to the court approval or disapproval of the plan, or specific changes in the plan; and, under circumstances deemed appropriate by this court, including the inadequacy of the plan proposed by defendants, such panel to proceed to develop and to submit an alternative plan, the expenses for which to be borne by the defendants.[28]

The elements that the proposed plan should incorporate included: bilingual services; bilingual courses of study; procedures for evaluation and classification of language ability and achievement; and special programs to compensate, to the extent possible, for the Board's past failure to provide plaintiffs and their classes with equal opportunity.

Aspira's Strategy to Obtain Equal Educational Opportunity

From late 1971 through early 1972, Aspira used many strategies in its role as a pressure group to change the policies and practices of the New York City Board of Education. First, Executive Director Luis Nieves called together a coalition of Puerto Rican leaders and organizational representatives involved in efforts to improve the education of the Puerto Rican in New York City. These included: Dr. Evelina Antonetti, Director of United Bronx Parents, an activist organization in the area of parent and pupil rights; Frank Negron from the Center for Urban Education; Maria Canino, a consultant for Kenneth Clark's Metropolitan Applied Research Corporation (MARC) and member of the New York City Board of Education; Julio Morales, Director of the East Harlem Coalition for Education; and Hernan LaFontaine, President of the Puerto Rican Educators Association and principal of P.S. 25, New York City's first bilingual school.

Though all the organizations represented were involved in Puerto Rican educational affairs, the group reflected diverse political persuasions and involvements. Because of this, it was agreed that the group would focus on one problem and define a strategy to solve it. The focus became the Central Board of Education. Three major objectives evolved: 1) that Chancellor Scribner appoint a city-wide commission for bilingual education, which would meet with him periodically to advise him on issues affecting language-minority children; 2) that an office of bilingual education be established, headed by an administrator who would report directly to the chancellor and who would wield the executive authority necessary to implement and coordinate new policies within the maze of the Board's complex departmentalized structure; and 3) that the chancellor include in his tax-levy budget a substantial

sum specifically for the support of bilingual programs, and an additional sum within the operating budget to staff and support bilingual education.

It took many months for the group to obtain a meeting with the chancellor. Some members pressed personal aims, thus undermining the unity of the group. The committee established by Aspira began to disband after the chancellor had agreed to all the demands but one, the stipulation that the commission to be appointed would have the power to recommend and to veto the chancellor's independent candidate for administrator of the Office of Bilingual Education. Interest groups within the committee, among them the Puerto Rican Educators Association, began to negotiate with the chancellor independently.[29]

Aspira's second tactic was to coordinate a coalition of major Puerto Rican community agencies. Once again, this type of coalition was "unheard of."[30] It evolved under the leadership of Yolanda Sanchez, Chairperson of the Board of Directors of the East Harlem Tenants Council, that such a coalition was formed. On very few occasions in the community's history had it been able to coalesce to support a given issue. In this instance the issue was the Nixon administration's failure to allocate funds to the Puerto Rican community and to appoint Puerto Ricans to high-level positions within the federal government. Puerto Rican groups maintained that the Nixon administration was more receptive to Mexican Americans in the Southwest, solely because they had supported him politically. It was not felt that an equitable funding distribution, based on population needs, had been made.

The Puerto Rican Inter-Agency Council's strategy was to attack the administration at a time when it would be most receptive to interest-group pressure—during the impending Presidential election. The coalition expected that Governor Nelson A. Rockefeller and Mayor John V. Lindsay would be less than effective allies in the venture inasmuch as they were not likely to receive President Nixon's support after attempting to run against him. Some felt that, by presenting a unified front, the community would earn the administration's interest,[31] much as Mexican Americans had done in the Southwest.[32] A particularly new facet of the coalition was the involvement of key Puerto Rican organizations in New Jersey and upstate New York.

Eventually dissension occurred within the coalition, and it began to dissipate its efforts. In addition to the pressure-group activities tactics, the membership involved itself in research. Because of each organization's specialized interests, a series of task forces were established.[33] As a member organization, Aspira participated actively in the New York State Puerto Rican Education Task Force (PRETF). The PRETF, chaired by Jose Vazquez, had as its goals: (1) organizing Puerto Rican interest groups in New York State around educational issues, (2) obtaining support for state legislation mandating bilingual education, and (3) effecting the appropriation of state funds for bilingual education.[34]

Internally, Aspira redirected its focus. It pursued two tactics to gain both expertise and its own information bank, inasmuch as it was obtaining neither through the Board of Education. First, it sought to fund its fledgling research and development program through the government. The center's capacity had never exceeded one full professional line. Although a study of the educational experience of the Puerto Rican on Long Island had been initiated, government funds for research, although they were actively sought, were not forthcoming.

Second, it sought and obtained funds to break ground in the area of high school bilingual education. In 1972, the Office of Economic Opportunity granted Aspira and Benjamin Franklin High School in East Harlem special funds to establish the first public bilingual high school program in the city.[35]

Beginning of the Interrogation

On October 25, 1972, and November 20, 1972, the PRLDEF presented over 392 separate "interrogatories" to the Board of Education. The questions related to different aspects of the educational program for Puerto Rican children in the New York City public school system. The areas of inquiry included: instructional design, methods of language assessment, budget, personnel policies, grouping procedures, dropout rates, graduation statistics, and other data essential to the suit. The answers were to serve as evidence in the case.

The interrogatories were not answered until July 2, 1973, because the Board of Education refused to respond to the complaint filed by Aspira and the PRLDEF. Instead, the Board asked the court to dismiss the case.

Board of Education Attempts to Dismiss the Lawsuit

In a memorandum to the judge, dated November 16, 1972, the Board of Education argued that the court should dismiss the case on the grounds that:

> "1. The court lacked jurisdiction[36] over the subject matter of the complaint.
>
> "2. Aspira could not bring the suit because an organization could not prove direct injury.
>
> "3. The complaint failed to state an injury for which the court could order a remedy or relief, inasmuch as the legal meaning of "equality"[37] could not be reduced to a specific educational program or service.
>
> "4. The individual plaintiffs described therein are all recent arrivals to New York City from Puerto Rico. Their first language is Spanish. The learning disability under which they find themselves is not a result of any previous state action, discriminatory or otherwise."[38]

On this basis, the Board argued that the *Aspira* allegation that the Board of Education was purposely depriving children of equal educational opportunity was ill-founded.

The PRLDEF Opposes the Board's Motion to Dismiss

On December 26, 1972, the PRLDEF responded to the Board of Education's motion to dismiss the suit and its first memorandum in support of that motion. With regard to the Board's arguments, the PRLDEF raised five points.

First, the court had jurisdiction, inasmuch as "once a claim is properly stated under the Fourteenth Amendment and 2000d, jurisdiction automatically attaches under 28 U.S.C. 1343, the jurisdictional counterpart to 1983."[39] To further support this point, the PRLDEF cited the 1954 *Brown* v. *Board of Education* Supreme Court decision[40] and other cases, where federal courts consistently assumed subject-matter jurisdiction in cases similar to *Aspira* in which a violation of equal educational opportunity was charged.[41]

Second, Aspira's statutory claim[42] under the Civil Rights Act of 1964 was one to which relief could be granted, regardless of any dispute concerning the exact meaning of "equality." This was based on the arguments that: (1) the public school system of the City of New York received substantial federal financial assistance, (2) in accepting federal funds, the defendants were obliged to maintain and operate the public school system in compliance with the statutory prohibitions against discrimination based on race, ethnicity, and national origin contained in the Act, (3) the regulations promulgated to effectuate the congressional policy on non-discrimination expressed in the Act imposed an affirmative duty to eliminate and to correct the effects of such discrimination, and (4) the Board had discriminated against the group of children bringing the suit on the grounds of ethnicity and national origin, in failing to provide plaintiffs with an equal educational opportunity and, therefore, had violated the Act.[43]

Third, Aspira had basis for a claim under the equal protection clause of the Fourteenth Amendment. The alleged discrimination in educational practices and the resulting harm were the consequence of the difference in treatment of Spanish-speaking versus English-speaking students. As such, the predominantly Spanish-speaking group met the requirements of a "suspect class" determination. (A suspect class is a group whose members have suffered the effects of prejudice as a function of being members of the group.) In the case of Puerto Ricans, use of the Spanish language was an aspect of their ethnicity.

> While English-speaking students freely raise their hands and ask questions, plaintiff's children sit in non-comprehending silence. And, while plaintiffs and their classmates may have the same books, for plaintiffs the pages are as if blank.[44]

There were substantial alleged wrongs. Aspira cited several studies in its contention that New York Puerto Ricans suffered the highest unemployment rates, the poorest housing, the worst medical care, the least effective social services, and the lowest wages.[45] Four years of extensive research by the United States Commission on Civil Rights found that a dismayingly high percentage of Puerto Ricans were still trapped in poverty. As of March 1975, while 11.6 percent of all Americans were below the low income level, this was the case for 32.6 percent of Mainland Puerto Ricans. The commission also found that while the median income for all U.S. families was $12,836 per year, Puerto Rican families earned only $7,629.[46] Aspira argued in its complaint that the socioeconomic disparities were directly related to the Board of Education's failure to provide equal educational opportunity.

In support of this equal protection argument, the PRLDEF cited cases related to the exercise of individual rights in other areas. For instance, literacy tests for voting were an attempt at curtailing the rights of equal protection. Specific safeguards were enacted to protect Puerto Ricans from voting legislation aimed at discouraging the use of Spanish.[47] The courts recently mandated bilingual elections. In 1973 and 1974 cases, the courts held that conducting elections in English alone precluded Spanish-speaking Puerto Ricans from casting an effective and meaningful ballot.[48] In the cases cited, courts upheld that the right to vote and the right to conduct a criminal defense are meaningful only when the individual comprehends the language, oral or written, in which the rights must be exercised.

Similarly, in *Aspira* the alleged difference in treatment was based on the ethnicity and national origin of the children bringing suit. Puerto Ricans, it was argued, are a distinct ethnic and national origin group as a group they suffered the consequences of this unequal treatment. The PRLDEF maintained it was irrelevant whether the Board of Education's actions were intentional or unintentional in bringing about the resulting unequal treatment. As long as wrongs existed, a group had grounds for seeking relief.

The fourth argument was that a suit did not have to be brought against any other federal or state parties or authorities as "indispensable parties,"[49] because a resolution in favor of Aspira would: (1) not result in the withdrawal of federal funds but rather ensure compliance with federal regulations; (2) not prevent federal and state agencies from protecting their interests or making known their positions to the court by intervening under the rules of civil procedure or by filing an *amicus curiae*[50] brief. Finally, the PRLDEF argued, complete relief could be provided by those already named in the suit as defendants.

In its fifth and final argument, the PRLDEF maintained that Aspira of New York and Aspira of America as organizations could bring this suit because "the central purpose for which Aspira was founded and continued to operate is to secure for young Puerto Ricans, including individual plaintiffs, a better education." Therefore, they had a "direct stake in the outcome of the litigation which satisfies the standards set by the court in other suits brought by organizations."[51]

In another reply memorandum to the court, the Board continued to argue that the case should be dismissed.

Board of Education Budget: Cuts Pending for Bilingual Education

Dr. Luis Nieves, then Executive Director of Aspira, was informed of the possibility that the Board of Estimates might reduce the chancellor's budget, including a reduction in funds for bilingual education. He immediately joined with other leaders to pressure Mayor Lindsay to prevent such cuts. Aspira's students and parents canvassed the city with petitions requesting the mayor's support of bilingual education. The support of Senator Jacob Javits was successfully solicited; he had already demonstrated his concern for the education of Puerto Rican children and the work of the agency in a number of instances.[52] Eventually, $9,000,000 was allocated for bilingual education, although $11,000,000 had been requested.

Judge Frankel Denies the Board's Motion to Dismiss

On January 23, 1973, a pivotal point in the litigation process was reached: Judge Frankel denied the Board's motion to dismiss the case. This was an important victory for Aspira and the PRLDEF because the judge took this action subsequent to and despite the lower court ruling against the plaintiff in *Lau* v. *Nichols*. *Lau* was a case similar to *Aspira*. It was brought by 1,800 Chinese children of San Francisco's public schools, who maintained that they were being denied equal educational opportunity. The United States District Court in California ruled that Lau and the children in the class being represented were not being denied their constitutional or statutory rights by the San Francisco monolingual public school system and, therefore, that the schools were not required by law to provide special instructional programs to meet their language needs.[53]

In his decision, Judge Frankel cited the California District Court's ruling in *Lau* as favorable to the Board's case. However, he felt that the weight of the cases cited, Aspira's arguments, and "the evident gravity and complexity of the questions presented" by *Aspira* and the PRLDEF merited legal audience; thereby he denied the Board's motion to dismiss the case.[54]

Aspira's Right to Request Relief

With regard to the Board's arguments in its motion to dismiss, the Judge felt that there was no question about jurisdiction. With respect to the question of relief raised by the Board, he stated: "In its relatively substantial aspect, the motion says the complaint fails to state a claim upon which relief can be granted."[55] This was an early indication of what was to be a key point of contention. What relief or remedies are within the court's power to dictate or legislate to a school system regarding the educational rights of children? What right, if any, did Aspira have to play a role in determining the nature of such relief?

Judge Frankel's opinion also contained an early indication of his assessment of the Board's argument and his own feeling that the resolution of the question of relief did not belong in the courts. He stated:

> The motion is not meritorious. Without attempting to foretell the outcome, we find it sufficient to say that "novel issues" of such apparent difficulty ought not to be resolved in the broad and relatively abstract terms of the complaint considered by itself. We may be permitted to wonder why the concerned legal officers of the city should choose to leave the plaintiffs' allegations unexplored and unanswered, cutting off at this threshold stage the possibility that such efforts could promote resolutions by means short of—but very possibly preferable to—the constitutional pronouncements of judges. Having ventured that *dicta*, and intending it as a suggestion, the court's formal office remains to say that the complaint should not be, and will not be, dismissed on motion.[56]

In addition to deciding that the case would not be dismissed, Judge Frankel took the initiative to write to the Secretary of the Department of Health, Education and Welfare (HEW) asking that the HEW enter the case as an *amicus curiae*. However, the acting general counsel of the HEW responded that on July 18, 1972, the New York City Board of Education had been informed of the HEW's intention to conduct a full-scale Title VI compliance review of the New York City school system. He refused to enter the case as *amicus curiae* on the basis that there was an absence of substantive data.[57] Judge Frankel sent copies to attorneys for both parties "out of abundant caution."[58]

The Board Formally Answers Aspira's Complaint

Pursuant to the judge's denial of the Board's motion to dismiss the case, the Board was legally bound to answer the charges made by Aspira in its September 20, 1972, complaint. On February 9, 1973, the Board formally answered the Aspira complaint. In its answer, the Board categorically denied sixty-three of the sixty-five allegations made by the plaintiffs. The two exceptions were paragraphs forty-nine and fifty. The Board and the individual officials named in the suit "admit the allegations set forth in paragraph '49' thereof but deny the relevance thereof as this study was not binding on the Board of Education."[59]

The Board thereby acknowledged that it had conducted *The Puerto Rican Study* (1953-57) on the educational needs of Puerto Rican children of limited English-speaking ability. The Board maintained, however, that it was not obligated to carry out the recommendations contained in the study.

With reference to the second point, the Board did acknowledge that there was a disparity in achievement levels between English-speaking and language-minority children. However, the Board also qualified this admission by insisting that it did not admit any allegation that would suggest that it had done little or nothing to address the condition or needs of children with limited

English-speaking ability. The Board clarified its admission, stating that it did

> . . . admit the allegations set forth in paragraph "50" thereof except insofar as to deny the allegations that defendants have done little or nothing to develop and implement educational programs to adequately remedy the conditions and thus have denied plaintiffs an equal educational opportunity.[60]

This denial of having done "little or nothing" was important, because the Board relied heavily on this argument later in the litigation process.

Discovery – The Lengthy Process of Preparing for Trial

The judge's refusal to dismiss the case and the Board's answer to the complaint triggered the arduous process of "discovery," or fact gathering. This is an important period in the trial process because both sides have the opportunity to ask questions of the other. It is on the basis of collected facts that the case is then prepared for trial. Recognizing the laborious nature of this task, the judge ordered both sides to prepare for trial in early summer.[61]

Depositions taken during this period from Chancellor Harvey Scribner and from Joseph Monserrat, President of the Board of Education both named plaintiffs in the suit, provide evidence of different viewpoints regarding the two levels of policy-making. When asked by plaintiffs' attorneys whether any member of the Board had expressed opposition to the implementation of bilingual education in the city, Chancellor Scribner replied:

> My record of where a person stands depends on not what he says, but how he votes when it comes to making these programs possible, making them possible not only from making its adopting possible, but also putting the dollars there to put the policy into effect.[62]

In terms of his own efforts to implement special programs for non-English-speaking children, Scribner mentioned the Board of Estimate's failure to meet his budgetary requests for bilingual education and the limitations placed on hiring bilingual personnel by the Board of Examiners. With regard to the children involved, he stated:

> We wanted to move to a program where there would be no non-English speaking youngster in the classroom without someone who could relate to that person in terms of his native language. . . . The youngster who has less stability has to suffer that much more trauma, and I think it is absolutely impossible for a youngster to tie in to what is going on in a classroom if he doesn't understand the language.[63]

Board President Monserrat stated in his deposition:

> I'm personally pleased with the lawsuit. I want it to go its course. . . . I think it will clear up a whole series of problems that have existed in this area for many years.[64]

When asked if he knew whether any other members of the Board were pleased with the lawsuit, Monserrat clarified that he did not know of anyone who "is particularly pleased."[65] In terms of what he hoped the lawsuit would accomplish, he added that there was a need for information regarding Spanish-speaking children in the New York City schools. He also articulated his own concern about the Board's limitations within state and city law. He hoped the lawsuit would

> clarify the law of the state which I believe does not permit bilingual teaching. . . . It will spur the City Fathers perhaps to recognize which they have just begun to do after some thirty years of assistance on our part to some tax-levy funds for this purpose. I think we are getting some token funds now. I don't think that this will be taken seriously until hopefully you men in this lawsuit can make the city realize it has a responsibility in this area.[66]

Monserrat was very supportive of bilingual education in the early grades. He qualified this approval for higher levels of instruction, however, because he felt that "the need to acquire English rapidly for subject content matter"[67] made concentration on English more important.

The process of discovery, or preparing for trial, also included the exchange and answering of interrogatories and the taking of sworn affidavits ("depositions") by both sides. The PRLDEF later complained about the quality and quantity of the Board's answers to its questions and its continuous delays in the taking of depositions, particularly from Joseph Monserrat, the only Puerto Rican on the Board. In spite of the judge's indirect reprimand and suggestion, the Board did not answer all the 292 interrogatories in the PRLDEF's statement, and those answered were not submitted until July 2, 1973.

The questions presented by the PRLDEF in its interrogatories of October 24, 1972, were intended to introduce evidence pertinent to the suit. Answers to such interrogatories are a form of testimony. As noted, the Board had petitioned the court to allow it to refrain from answering the PRLDEF interrogatories until the court had ruled on the Board's motion to dismiss the suit. The judge disallowed this attempt to refrain from answering the interrogatories in his January 23, 1973, decision, which denied the Board's motion to dismiss the case.[68]

As is often done in federal courts, the judge assigned a United States District Court Magistrate, Sol Schrieber, to settle any questions or issues that arose between the attorneys and which precluded taking depositions and answering interrogatories. Between January and July of 1973, a number of statements and disagreements were the subject of ongoing conferences with the magistrate. Some issues included the question of confidentiality of records, the repeated delays in the taking of testimony, and, most important, the quality and quantity of answers to Aspira's interrogatories.

On July 19, 1973, the PRLDEF once again expressed concern to the magistrate regarding the Board's laxity in responding to its interrogatories. It complained that, even though the questions had been presented to the

Board officially on October 25, 1972, the Board did not submit answers until July 2, 1973. Those finally presented to the PRLDEF were, it felt, for the most part either not answered well or only partially answered. The PRLDEF considered it urgent to lay the groundwork for two key issues: How many children were in the class it represented? What was the quantity and substance of programs being provided to children of limited or no English-speaking ability?[69]

The Board argued that the data necessary to answer all the questions raised by the PRLDEF could not be provided, because: it was either not available from the Board offices, or it was too costly to gather from individual schools, or it was simply nonexistent. Inasmuch as the Board's responses to these questions were essential to the PRLDEF's case, it continued to press for answers. The Board, on the other hand, maintained that it was not obligated to answer these questions. The lack of answers continued to stall discovery.[70]

The Survey Remains a Moot Issue

The attorneys for the Board and the PRLDEF finally agreed to conduct a survey that would serve to collect the needed data. The PRLDEF and Aspira conducted research and interviewed experts in the field of education in an effort to make recommendations that would maximize the validity of the survey. They submitted their recommended survey design.[71] Not only were its recommendations not heeded, but in December 1973, the PRLDEF asked the magistrate to intervene because the Board had changed its position and now refused to conduct a survey to gather the evidence and responses to the unanswered interrogatories. The PRLDEF viewed this as an act of bad faith.[72]

The Board maintained that there had been some misunderstanding and, in refusing to conduct a survey, stated:

> Were it not for that perceived compulsion to conduct a survey, defendants would not have undertaken to expend tens of thousands of dollars of public funds which would obviously be put to better use.[73]

The magistrate then asked the PRLDEF to state the legal basis for compelling the Board to conduct a survey. The PRLDEF responded to the court by highlighting the survey's direct relationship to the substantive questions raised by the suit. This issue, together with other unresolved issues, was tabled essentially because of mounting developments in a case that was similar to *Aspira*.

Lau v. *Nichols*

Meanwhile, a suit of direct relevance to *Aspira* began to gain national attention. It was brought by Kinney Kinmon Lau and his guardians, on behalf of 1,800 children of non-English-speaking ability, against Alan H. Nichols, Chancellor of the San Francisco Public Schools, for the purpose of "seeking relief against alleged unequal education opportunities resulting from the officials' failure to establish a program to rectify the students' language problem."[74]

The case was first argued before the District Court of California. The lower court in San Francisco was very sympathetic but unresponsive. In the language of the court, "Yes, these children do have a problem, but it is one that should be addressed to the legislature, not the courts."[75] The court ruled that, as long as these children received the same education made available under the same terms and conditions to the other tens of thousands of children in San Francisco, the program was adequate. The court did admit, and the judge recognized, that some children probably were not learning, but conceded that, in the court's judgment, this was a social and legislative problem, not a legal one.[76] The court decided against Lau and the class of plaintiffs and dismissed the case.

Lau was appealed to the United States Court of Appeals for the Ninth Circuit; the Ninth Circuit affirmed the decision of the lower court. It found that "there was no violation of the equal protection clause of the Fourteenth Amendment or of §601 of the Civil Rights Act of 1964"[77] and added:

> Every student brings to the starting line of his educational career, different advantages and disadvantages caused in part by social, economic and cultural background, created and continued completely apart from any contribution by the school system.[78]

The case was finally appealed to the Supreme Court of the United States, which agreed to hear the case "because of the public importance of the question."[79] The case was argued before the Supreme Court on December 10, 1973.

With the permission of both parties and the Court, a key figure entered the case as *amicus curiae*. This was Stanley Pottinger, who appeared as a representative of the United States government. Pottinger, then Assistant Attorney General, played an influential role in the ultimate presentation of the case. As a spokesman for the government, he supported the argument that Lau had rights based on the Office of Civil Rights regulations of May 25, 1970, which governed the use of federal funds under Title VI of the Civil Rights Act of 1964. These guidelines were cited by Justice William O. Douglas in the Supreme Court's decision to reverse the lower courts. He stated:

> It seems obvious that the Chinese-speaking minority receives fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the regulations. In 1970 HEW issued clarifying guidelines, 35 Fed. Reg. 11595, which include the following:
>
> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take

> affirmative steps to rectify the language deficiency in order to open its instructional program to these students.[80]

In reversing the decision, the Supreme Court added:

> Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program he must already have acquired those basic skills, is to make a mockery of public education.[81]

The PRLDEF had anticipated the Supreme Court decision. In reversing the appellate court, the Supreme Court reasoned that "it is not the issue that you cause the problem. . . . School districts throughout the country have an affirmative obligation to start providing education that's geared to the needs and abilities of the child."[82]

The Supreme Court's unanimous decision in *Lau* was particularly important because the Supreme Court had sidestepped an argument common to both *Aspira* and *Lau:* the equal protection issue. The decision essentially supported the authority of the HEW and *Aspira* argument based on guidelines and regulations of the HEW. In skirting the constitutional argument for equal protection under the law, the Court relied solely on statute:

> We do not reach the Equal Protection Clause argument which has been advanced but rely solely on §601 of the Civil Rights Act of 1964 (42 USCS §2000d) to reverse the Court Appeals.
>
> That section bans discrimination on the ground of race, color, or national origin, in "any program or activity receiving Federal financing assistance."
>
> Discrimination is barred which has that *effect* even though no purposeful design is present.[83]

Doubts Led to Critical Moments

The Supreme Court's consideration of *Lau* delayed the litigation of *Aspira*. Recognizing the similarity of the questions and issues raised by both *Lau* and *Aspira*, the Judge delayed action until the Supreme Court's decision in *Lau*. The period subsequent to the Court's decision to hear *Lau* and prior to its favorable final decision was a very difficult one for the PRLDEF and Aspira. Both had strong doubts that the Supreme Court would rule in favor of Lau. They based their concerns on the Court's trends in recent decisions made in civil rights cases and on the view that the Nixon Supreme Court appointees, including Justices Rehnquist and Powell, were "conservative."[84]

The PRLDEF discussed with Aspira the possibility of settling the case with the Board out of court. After deliberation, it was decided not to pursue this alternative. A major consideration was the fact that the Board, in Aspira's judgment, had not moved from its steadfast position that it was already doing everything possible for non-English-speaking children and that it was financially unable to offer more. It was anticipated, therefore, that the Board would be prepared to offer little or nothing to the two classes of children represented in *Aspira*. Such a settlement would have no impact on Board of Education policies affecting the instructional program of both classes of children. Finally, Aspira had more to lose than to gain in terms of the Puerto Rican community's perception of the agency.[85] The leadership of Aspira of New York and of Aspira of America took different positions regarding the possibility of settlement before and after the Supreme Court's decision in *Lau;* Aspira of America favored settlement.[86]

The PRLDEF communicated with attorneys for *Lau* on an ongoing basis. It submitted an *amicus curiae* brief and testified before the Supreme Court in support of plaintiff's claims. *Lau* also had an impact on *Aspira*, in terms of which children were entitled to relief resulting from the litigation. The *Lau* plaintiffs' original petition to the U.S. District Court for the Northern District of California (Civ. No. 70 627, filed March 25, 1970) included two classes of non-English-speaking Chinese pupils. The first class was composed of 1,790 Chinese-speaking students in the San Francisco School District who admittedly needed special help in English and who received none at all. The second class consisted of 1,066 Chinese-speaking pupils who received some, but allegedly inadequate, assistance. The subsequent petition for *certiorari*[87] to the U.S. Supreme Court (filed April 6, 1973) pursued only the claims of the first class, namely, those pupils receiving no English instruction. The PRLDEF petitioned on behalf of two similar groups, a group receiving no special instruction to meet its special needs and another receiving allegedly inadequate instructional programs.

Impact of *Lau* on *Aspira*

The *Lau* decision had a direct impact on *Aspira* with regard to the case law. Aspira and the PRLDEF welcomed the unanimity of the decision, which was probably achieved by skirting the constitutional question and by remanding the design of relief to the lower court, but they noted that the Court left many problems unanswered. Judge Frankel described these questions as a "foreseeable jungle of complexities."[88] A sample of the problems included: How many children did the *Aspira* classes include? What means should, or must be, used to identify and classify the students entitled to relief? What instructional programs could be characterized as "substantial" and "affirmative" efforts? What are the qualifications necessary for teachers of such programs? How many teachers were needed? What "other" services (counseling, psychiatric, medical, nutritional) were these children entitled to, or being excluded from, because of language differences? How would the program(s) defined as "appropriate relief" be administered, evaluated, and financed?

The PRLDEF moved quickly to apply the Court's decision to *Aspira;* it feared that further developments in *Lau* would be detrimental to its own case. *Lau* had been remanded to the lower court for the design of relief. Judge Lloyd Burke of the District Court who had ruled against the plaintiffs in *Lau* in 1970, was to oversee the

design of the remedy by the San Francisco School District. The PRLDEF feared that the Judge's disposition toward the case, coupled with the English as a Second Language (ESL) program requested by attorneys for the *Lau* children, would limit the design of remedy for the *Aspira* children also to ESL.

Aspira wanted a more highly articulated and comprehensive bilingual program for its complainants. If the courts set a precedent for a lesser service, the setback would be hard to overcome. The PRLDEF, therefore, moved to have its own remedy settled quickly, if possible before *Lau*. It reasoned that if legal precedents were couched in its own terms rather than in *Lau's* its goals would be better served. Nonetheless, it would not be easy to argue for bilingual education. The PRLDEF was limited to arguing for bilingual education within the parameters established by the HEW May 1970 Title VI guidelines.

Aspira's fears were ill-founded. It took many months for the design of relief in the *Lau* case to be established. By May 1974, the San Francisco school system still had no plan to implement the Court's decision. In June, the school district agreed to the participation of a task force representative of diverse language-minority groups and local and federal officials in the development of the plan. Judge Burke, in fact, agreed to extend a previous June deadline for the plan by another six months.[89]

Aspira Moves for Summary Judgment

Seven months of negotiations followed before some of the questions raised in *Aspira*, as a result of *Lau*, were answered to the limited satisfaction of both parties. The PRLDEF's first step in moving the case was making a motion for summary judgment; the motion was filed in February 1974, thereby asking the court to apply the legal principles set forth in *Lau* to *Aspira*. They pointed to the characteristics shared by *Aspira* children and the children in *Lau*. The court was asked to give this group, essentially children who were receiving neither ESL nor bilingual education, the right to relief based on the precedent of the *Lau* decision. This would have left in litigation the remaining class of children of *Aspira*, which the PRLDEF essentially characterized as having few or inadequate opportunities to participate fully in the learning process.[90]

The Board of Education opposed the PRLDEF's request for summary judgment, maintaining that it was offering many services to this group of children. The innovations listed by the Board included the introduction of: Puerto Rican paraprofessionals, DISTAR programs,[91] bilingual teachers in community and school relations, and Puerto Rican secretaries. These hirings and programs it felt, were sufficient to meet its responsibility to these children under Title VI regulations.[92]

In an effort to demonstrate to the court that, in fact, there were students who were not receiving any services, the PRLDEF began interviewing teachers and principals and taking affidavits to support its argument. The Board of Education tried to prevent these interviews by issuing a memorandum[93] stating that personnel would be prosecuted inasmuch as giving evidence in a case in which the Board of Education was a defendant (specifically the *Aspira* case) "would constitute a misdemeanor." The memorandum further specified that "no teacher or principal is to give any affidavits, statements, other opinions or materials in answer to any request made by the counsel to plaintiffs in the Aspira case."[94] The PRLDEF quickly filed suit and obtained an order from the judge that prevented the Board from continuing to circulate or act on the memorandum.[95]

Rodriguez v. *Percell*

In the resulting suit, *Rodriguez* v. *Percell*, the PRLDEF argued that the New York City statute prohibiting city employees from providing opinion testimony in any court was a violation of the First Amendment and thus unconstitutional. It argued that the city was using the statute to prevent teachers from informing lawyers or providing evidence and testimony regarding conditions in their schools. This lawsuit was assigned to Judge Frankel as a case related to *Aspira;* he subsequently ruled that the Board had violated the rights of city school personnel in its March 28 memorandum. The judge ordered the Board to issue a new memorandum that apprised personnel of their rights.[96] However, the failure of the city to implement this ruling effectively resulted in pressure by the PRLDEF to have the section of the city charter cited by the Board declared unconstitutional.[97]

As a result of the *Rodriguez* decision, the PRLDEF, in April 1974, was able to submit to the court twenty-three affidavits by teachers and principals confirming that there did, indeed, exist a class of students in New York City public schools not receiving special or adequate language instruction.[98]

Board Requests Judge Delay Decision on Summary Judgment

As the Board's legal representative, the Office of the Corporation Counsel requested that the court delay or adjourn its ruling on the PRLDEF's request for summary judgment. It explained that the delay was necessary in order to conduct a survey of the children and services in question.[99] (This, of course, was the survey which the Board had refused to conduct prior to *Lau*.) Judge Frankel agreed to delay ruling on the question but directed the Board to include plaintiff lawyers in deliberations on the survey to ensure that it was comprehensive.[100]

Slightly more than 30,000 children of limited English-speaking ability were "identified" by the survey. The judge questioned these figures, since they constituted only a fraction of the numbers of such children which the Board itself had reported to the court six months earlier.[101] The survey's findings were also

unacceptable to Aspira, and the PRLDEF. The judge put these findings aside. It was then clear that more than a mere survey would be needed to identify children entitled to relief. The failure of the survey supported the PRLDEF's argument that valid assessment instruments were needed for the identification of children entitled to the program.

The Board of Education Opposes Summary Judgment

On March 25, 1974, the Board filed its opposition to the PRLDEF's motion for summary judgment. Once again, the Board maintained that it was making a "substantial" and "affirmative" effort as required by Title VI regulations and, therefore, it was not obligated to do more. To support this contention, the Board again listed eleven programs which it was administering for children of limited or no English-speaking ability.

Though the Board listed eleven programs, it did not specify, with regard to each, the number of children receiving instructional services, the number of hours per day they received the service, the number of personnel involved in the service, or the expenditure and funding sources of each program.

Aspira and PRLDEF Prepare Tactics

Aspira's major concerns, subsequent to the *Lau* decision, were that the court deem bilingual education appropriate relief and that as many children as possible be considered eligible for such relief. Aspira was apprehensive that the original class of 180,000 children with limited or no English-speaking ability would be reduced to a relatively small number. (The results of the first survey were an indication that this was indeed possible.) Did not the Board have an obligation to compensate for its past policies, which had resulted in exclusion for thousands of children? Aspira felt that these children were now functioning even further below their grade levels, as a direct result of Board policies.

There is evidence that interest groups traditionally influential in the public educational policy change process had not anticipated a ruling favorable to plaintiffs in *Lau*. It was intimated, for instance, in the hearings before the Special Master and the judge, that administrators of the Board had not provided even their own attorneys with the quantity and quality of information they needed to represent them more effectively in court. Also, the United Federation of Teachers (UFT) had not taken a public position with regard to the suit.

Chancellor Anker in his budget requests had expressed his concern about meeting the Board's obligations with respect to the suit. However, the City's Board of Estimate did not allocate the Chancellor's recommended budget for bilingual education in the 1972-73, 1973-74, or 1974-75 fiscal years.[102] During the suit's litigation, Chancellor Anker in turn had reduced the status and authority of the Office of Bilingual Education and the city-wide Commission on Bilingual Education,[103] which had been established by his predecessor. Under Chancellor Scribner, the administrator of the Office of Bilingual Education had reported directly to him and he had met regularly with the Commission on Bilingual Education.[104] Chancellor Anker altered both these administrative policies. Under his administration, the Executive Director of the Office of Bilingual Education reported to the Head of the Division of Educational Services and no specific function or authority was given to the commission.

Aspira and the PRLDEF had made considerable effort between 1972 and 1974 to keep educators in the field of bilingual education and community groups informed about developments in the litigation. They requested Board involvement and support from these groups in strategy sessions.[105] Mario Anglada, Executive Director of Aspira of New York, invited a committee of experts and community leaders to meet regularly and to consult with Aspira and the PRLDEF.[106] In addition, Aspira began to meet with parent and student groups throughout the city. A minor study was conducted concerning parents' knowledge about and attitude toward bilingual education.[107]

Aspira continually expressed its lack of faith in the Board of Education's promises and was anxious about any decision by the court that lacked substantial provisions to ensure the Board's compliance.[108] It was important to Aspira to inform the community of the benefits it could derive from the suit. Inasmuch as it was a class action, Aspira knew that community decision could affect the outcome. Another community group, if it were to challenge Aspira's claim that it was representing Hispanic children, could affect the progress of the suit. Aspira considered the possibility of using the mass media as a tool to inform the community and gain added support. Attorneys warned that more might be lost than gained in such an approach by developing a "bandwagon for the opposition." The fear was that the UFT, a pressure group that exceeded Aspira in power, influence, and finances, would use covert strategies against the suit. The UFT had already demonstrated its lack of support for bilingual education, as defined by Aspira, in a variety of instances: legislative memoranda against proposed bilingual legislation in New York State,[109] opposition to special and separate licenses for bilingual teachers instead of teachers with greater seniority, opposition to the designation of bilingual teachers as a form of ethnic selection and discrimination, and opposition to quota systems to assure minorities equal opportunity.[110] With regard to the importance of having Puerto Ricans in teaching and decision-making as well as administrative positions, Albert Shanker expressed the following:

> Now, there are a lot of districts in New York City right now who have many more minority group supervisors and teachers than they had last year or the year before, due to the changes in hiring and the decentralization law and the community boards and everything else.
>
> Now I think it is fine if there are more minority group

people working in these areas. But there is absolutely no evidence that reading scores have improved or math scores have improved or anything else has improved.[111]

Aspira's decision was to continue to involve community leaders as well as experts in the field of bilingual education and the law; it would continue to inform parents, to the extent possible with its limited financial resources.

In the motion for summary judgment, Aspira and the PRLDEF sought to have the court find the Board liable. They hoped to persuade the court that the Board was in violation of Title VI of the Civil Rights Act. This would have ensured that the procedures required by federal regulations include requiring a remedial plan and the authority to withhold all federal funding if compliance were not achieved. The worst outcome Aspira anticipated was for the judge "to put us to trial on the issue of liability—whether and how many children are receiving no services."[112]

The Question of Finance

The Board was overwhelmed at the thought of the cost of financing a massive program at a time when the finances of the city and the Board were already approaching a critical stage. There were already signs at this point of pending financial crises for the City of New York. At a meeting between attorneys for both parties and Judge Frankel, called by the Corporation Counsel, this was the major issue.[113] The Board argued that the economic crisis made it impossible to make programs available to tens of thousands of children. In addition, contractual agreements (the UFT contract) prohibited broad-based changes in policies and procedures, which would be the necessary outgrowth of implementing such a program.

Aspira argued that this was not a valid reason for denying children their rights. Judge Frankel stated to the Board that a change in its priorities could result in amassing the necessary funds. He added that the city was obligated to fulfill its responsibilities and that a federal court had within its authority the right to order the city to float bonds, if necessary, to meet this commitment. Furthermore, he clarified that a federal court decision would supersede any agreements or contractual obligations.

The PRLDEF's strategy had always been to avoid the question of finances. Wherever possible, issues were divorced from their financial ramifications. The major exceptions to this strategy were instances in which the PRLDEF sought to minimize the Board's efforts in educating children of limited or no English-speaking ability. In this respect, the PRLDEF continually pointed to the fact that state, federal, or private funds and not tax-levy funds made specific programs possible, and it argued that the Board's efforts could not be measured solely by considering its attempts using the tax levy.

Differences in positions regarding finances, however, became increasingly divisive. The President of the Board, Joseph Monserrat, in a meeting with Mario Anglada and Luis Alvarez, tried to impress on them the Board's critical financial situation and the impact that an "unreasonable" plan would have on the schools. He suggested that a lump sum of money might be a viable solution.[114]

Joseph Monserrat's position on the issue was shared by numerous members of the community. At a meeting held to discuss a plan that Aspira was to present to the court, many individuals stated that agreeing on a program without determining a specific sum of money to finance it was poor strategy. Most feared that, without the allotment of a specific amount of money, the Board would not carry out any program to which it might have agreed.[115]

An Agreement Between Parties Is Sought — Judge Intervenes to Request Plans

The judge decided that summary judgment was appropriate and called in both parties; there remained the question of the nature of the Board's liability. As the judge had already indicated, he was reluctant to resolve the question of the Board's liability. He ordered both sides to meet to discuss key issues of agreement and disagreement.

The major breakthrough in negotiations came in April 1974, when Judge Frankel ordered Aspira and the Board of Education each to develop a plan for the education of the class of children defined, pursuant to the terms of the 1970 HEW guidelines. Plans were to be submitted to the court by May 1974. Upon submission of the plan, each party was then to criticize the other's plan in a memorandum to the court.

Throughout May 1974, Aspira and the PRLDEF held meetings with experts and community representatives to obtain recommendations for the plan. Among the community leaders invited to participate were Dr. Evelina Antonetti of United Bronx Parents; Gerena Valentin, Chairperson of the Puerto Rican Civil Rights Association; Francisco Trilla, M.D., member of the Board of Directors of Aspira of New York; Luis Nunez from the U.S., Commission on Civil Rights; and Awilda Orta, President of the Puerto Rican Educators Association. Experts invited to take part included: Dr. Pedro Algarin of the City College of New York; Professor Jose Vazquez, Hunter College; Dr. Michael McColgan, Consultant; Carmen Perez, New York University; Luis Mercado, Principal of P.S. 75; Genis Melendez of Community School District 15; Dr. Frank Bonilla of CUNY; and Dr. Sylvia Viera of the University of Massachusetts. With the help of these individuals, Aspira's plan was developed.

It was not without many discussions, frustrations, and compromises on the part of all concerned that the elements of the plan emerged. Community leaders and experts individually took a wide spectrum of positions on a variety of policy issues. As already discussed, the question of finances was one of these. Other key policy issues in dispute were: Who was to administer the program? How would noncompliance be prevented? What

would be the qualifications of teachers in the program? How was the hiring of bilingual teachers to be ensured? How was a cultural component to be ensured? How was the community to be assured of participation in decision making?[116]

Meetings to discuss these issues often were held in the absence of attorneys. Community members and leaders often demonstrated their continued lack of faith in the courts (despite *Lau*) and the schools. The community, in most cases, did not understand fully the limitations imposed on the attorneys and the court by the litigation process; it was also unaware of the extent to which the powers and functions of the courts were circumscribed. Often attorneys became the scapegoats of frustration. The community's frustration was considered understandable, in view of its history. It was, therefore, decided to remove the attorneys from such a position. Mario A. Anglada, as Director of Aspira, decided to hold a series of meetings between a task force on the Aspira suit and a conference of experts, so that the community could reach a unified position and develop specific recommendations to be submitted to the attorneys for the final development of the plan.[117] The efforts were supported by funds received from the Carnegie Foundation.[118]

The PRLDEF found itself in a very difficult and tenuous position. Community representatives pressured for "assurances" of full bilingual programs and financial commitments. The court's request for the plan, however, was not an assurance of its favorable judgment. The PRLDEF was delegated to submit a pedagogically sound plan. Each aspect of this plan might have to be defended in court. It became imperative that all the experts, attorneys, and representatives of Aspira come to agreement and speak with one voice.

The key point of dissension among the three was not whether Aspira would demand bilingual education as "the necessary and appropriate program" to meet the HEW regulations enforced in *Lau*, but whether Aspira would demand a transitional or maintenance program.[119] Many community representatives saw a transitional program, sometimes termed a "transfer program," as a dead end. The attorneys and Aspira agreed that bilingual maintenance programs would not be acceptable to the judge. They viewed the bilingual education program obtainable through the courts not as complete and ideal but as a foundation on which the community could continue to build.

Some experts and community members, however, felt that maintenance bilingual education was necessary. Maintenance bilingual education is the use of two languages in the instructional program. It is distinguishable from transitional bilingual programs in that it has as its goal the maintenance of the student's skill in two languages throughout his educational experience. The precedent in *Lau* established the language-minority child's right to equal participation, not to bilingual education: would he no longer have the right to a special instructional program once able to participate in the regular instructional program in English?

Legally, education has not been established as a right under the Constitution, much less so maintenance bilingual education. Attorneys felt it was difficult enough to argue that culture was a necessary component of the transitional program. Consultants to the PRLDEF suggested that the only substantive research to support such an allegation was found in a number of psychological studies that related to self image.[120] Some studies developed the theory that the design of monocultural programs excluded children of other cultures.[121] Others sought to show how specific cultural variables or modes were in conflict with the dominant society and functioned to exclude the child.[122]

Aspira's Plan

Aspira and the PRLDEF maintained that, pursuant to the *Lau* mandate, the only instructional program that would satisfy the civil rights of children of limited English-speaking ability would be a bilingual one. Therefore, the plan submitted to the court offered: (1) legal precedents for bilingual education plans; (2) the instructional elements considered essential to a bilingual program; (3) the pedagogical rationale for those instructional elements; (4) the positions taken by city, state, and federal authorities in support of bilingual education; (5) recommendations regarding the qualifications, role, function, recruitment, and training of personnel for the proposed program; (6) recommedations pertinent to the assessment and screening of pupils entitled to the program; (7) bilingual program models for elementary, junior high, and high school levels; and, finally, (8) a design for the implementation and monitoring of the program.[123]

The plan essentially maintained that all children found entitled to participate in a bilingual program should receive an instructional program including a minimum of four elements:

> "1. Language arts and comprehensive reading programs introduced and taught in Spanish;
>
> "2. Curriculum content areas taught in a language that the child fully comprehends;
>
> "3. English as a Second Language, taught through a sequentially structured program which includes understanding, speaking, reading and writing skills (the ESL Component);
>
> "4. Puerto Rican culture, reflected in all aspects of the curriculum program."[124]

Although it emphasized that the Board of Education was to be held responsible for its implementation, the Aspira plan insisted that, to ensure its implementation "in accordance with the terms and spirit of a court decree,"[125] two conditions were essential: (1) that the court maintain jurisdiction over the litigation until full implementation was achieved; and (2) that a committee including representatives of both parties and others selected by the court, be appointed by the court to oversee the administration of the compliance procedures.[126]

Under the first condition, the court would be in a position to ensure compliance by requiring periodic reports and on-site inspections, and by permitting the receipt of grievances.

The Board's Plan

At the outset, the Board described programs that it deemed in compliance with the HEW guidelines established in *Lau* and acknowledged that it "recognizes its responsibility to address the needs of those students whose substantial difficulties with the English language exclude them from effective participation in the educational program."[127] However, the Board argued that its commitment to this principle need not be evidenced by response to Aspira's suit; its extensive services and the programs developed and implemented over the years substantiate its compliance.[128]

The objective of the various programs developed for this group of students by the Board was the "development of an adequate command of English."[129] The framework for achieving this end included:

> "1. Supplementary instruction in English with the objective of attaining early functioning competency in English, and
>
> "2. Instruction in whatever combination of English and the native language necessary to provide the student access to the material."[130]

Within this framework, the Board argued, the design of particular programs for children with "language disabilities" was adequate. Therefore, there was no single specific program that would meet the needs of all the children qualifying for assistance, as required under HEW guidelines.[131] In fact, the Solicitor General of the United States, in his memorandum to the United States Supreme Court as *amicus curiae* in *Lau*, stated:

> Whether that assistance should be in the form of a bilingual curriculum rather than special training in the English language or some other program is for the informed judgment of the local school authorities, so long as substantial effort is made.[132]

The Board maintained that it had made a "substantial effort." Numerous programs for "language-handicapped" children had been pioneered and implemented in the schools of New York City.[133] In recent years, the development and implementation of these programs, in fact, has accelerated as "confidence has grown in particular educational approaches and as trained personnel have become available."[134] The Board then listed twelve programs or services in the New York City schools that "either individually or in combination are appropriate means under HEW guidelines of meeting the needs of students with English language deficiencies."[135] The following were ten programs listed by the Board:

> "1. English as a Second Language.
>
> "2. Language Arts taught in Native Language.
>
> "3. Subject Area Instruction Taught in Native Language.
>
> "4. Cultural Studies and Heritage Program.
>
> "5. Subject Areas Taught in English with Reinforcement in Native Language.
>
> "6. Comprehensive Reading Program.
>
> "7. Comprehensive Reading Program with Reinforcement.
>
> "8. Orientation Classes.
>
> "9. Orientation Classes in Native Language.
>
> "10. Supportive Pupil Personnel Service Program."[136]

The Board added that, in addition to the listed programs, there were many other programs and services from which the language-handicapped child benefitted. Some examples included: after-school study programs; programs and activities aimed at the parents of Category I and II children (the Board's terminology), such as bilingual notices, letters, and newsletters; and many other programs and services that were in operation in the various decentralized school districts.[137]

The Board reiterated its concern that there be flexibility in providing for individual student needs, including experimentation in innovative methods, and, it asked that the court take into consideration real limitations imposed in "some areas."[138] The first of these was the inadequate supply of qualified personnel, rather than lack of effort to recruit and train, that brought about the teacher shortage. Second, it included the limitations imposed by budget constraints in view of its many legal and educational responsibilities. Despite these constraints, the Board claimed to have made substantial expenditures for services for children of limited English-speaking ability, and a concerted effort to obtain additional funding from special federal and state reimbursable programs as supplementary tax-levy allocations from the city's budget earmarked to meet these needs.[139]

In an effort to demonstrate to the court that historically it had endeavored to educate children of limited English-speaking ability, the Board offered a synopsis of its efforts since 1948, culminating in a list of twelve sample programs in operation at the time:

> "1. Substantially increased bilingual classes, schools, and mini-schools, and English as a Second Language Classes.
>
> "2. A large number of reimbursable programs developed under Titles I, III and VII of ESEA.
>
> "3. The College Bound and College Discovery Programs which prepared a large number of Puerto Ricans for college.
>
> "4. Ethnic studies courses.
>
> "5. A Bilingual Resource Center at the Board.
>
> "6. In-service training programs.
>
> "7. Five hundred guidance counselors received Berlitz and Cattaegne Spanish language courses between 1972 and 1973.
>
> "8. Increased recruitment efforts resulted in 1,100 regularly licensed bilingual, ESL teachers and bilingual counselors in the previous ten years.
>
> "9. The establishment of new bilingual licenses.

"10. The High School Directory was translated into five languages.

"11. Project Best, a bilingual teacher training program, had completed its fourth year of federal funding.

"12. The Bilingual Teacher Corps was training 32 teachers in bilingual methodology."[140]

Aspira's Reaction to the Board's Plan

The judge asked each party to react to the other's plan. The Aspira response memorandum argued that the program set forth in the Board's memorandum was inadequate for three reasons: (1) the Board had misconstrued the *Lau* decision; (2) except for bilingual education, the Board's programs were inadequate; (3) the Board's attempt to justify its failure to implement bilingual programs because of the lack of personnel or funds had no merit. The PRLDEF also argued that the Board's memorandum was an attempt to restrict the number of children eligible under *Lau* by the construction it placed on "substantial English language difficulty" and "substantial effort."[141]

The Board of Education based its proposal on the opinion given by the Solicitor General in his testimony in *Lau*. He had argued that the court only inaicates the executive perimeters of legality under the Constitution; the executive branch, embodied in HEW, is broadly empowered to elaborate the meaning of "substantial difficulty" and "substantial effort," by promulgating guidelines within those legal parameters.[142] The Board did not view any one program design as the only way of fulfilling its requirements, so long as the school district can demonstrate a substantial response to a substantial difficulty. The Board claimed it could demonstrate a substantial response to the Category II children with severe language deficiencies.

On the basis of other civil rights decisions, the PRLDEF argued that compliance derives from the *effectiveness*, not the *magnitude*, of the *response*. The criterion for district compliance is whether its students are reaching full educational participation. If, within a district, students reach full participation, then said district is in compliance with the Supreme Court criteria; if the program design does not bring about such participation, the school is effectuating a discriminatory program.

The PRLDEF maintained that the HEW guidelines, and not the Solicitor General's testimony, constitute the ultimate authority.[143] Nowhere in the HEW guidelines is the term "substantial English difficulties" used. The guidelines define the group as children with "language difficulty," without any mention of terms such as "substantial," "severe," "moderate," or "slight." The PRLDEF argued:

> The point at which the child's language deficiency triggers the application of *Lau* is equally unambiguous when the deficiency results in the national origin-minority group child's receiving less benefits than the English-speaking child.[144]

The PRLDEF failed to acknowledge, however, that in the original complaint filed it defined the class of children it represented as "children who speak, read, write and comprehend the English language with substantial difficulty or not at all."[145]

It argued that instructional programs to address these language deficiencies must be open to all children in the class represented by PRLDEF, not just Category II children as maintained by the Board. The Board could not attempt to limit its obligation by maintaining that the efforts and "considerable progress" made satisfied its perceived obligation to make a "substantial effort." The PRLDEF maintained that the issue was whether the described efforts the Board had resulted in affirmative programs that equalized the receipt of educational benefits. It argued that simply to benefit children with language deficiencies was not enough; equal access was the appropriate criterion. Finally, the PRLDEF stated that the Board's allegation that the programs they listed "clearly benefit the language-handicapped child" was not substantiated.[146] The memorandum at no time described Board efforts in terms of effectiveness.

Another point of contention was the application of *Lau*. The PRLDEF took exception to the Board's position that "informed local authorities" had sole discretion to formulate whatever program they believed fulfilled *Lau*'s mandate. The PRLDEF argued that the court had jurisdiction and that the Board's allegations had no precedent, even under *Lau*, in which determination of "relief" had been remanded to the district court. The PRLDEF argued that the two criteria used by the Supreme Court to determine the appropriateness of relief ordered by a district court were whether it was consistent with the court's equitable powers and whether the relief was sufficiently effective. In this case, it maintained, the "informed judgment" of local school authorities may not be the one relied upon most heavily by the court to determine the best interest of children with language deficiencies.[147] As the Board itself stated in its memorandum, it functioned under certain limitations and was influenced by certain factors, such as fiscal considerations, that ultimately are contrary to the best interests of the school children affected.[148]

The programs being implemented by the Board, the PRLDEF maintained, were inadequate, with the exception of bilingual education. It argued that the stated objectives of the Board's programs, individually and as a whole, were not met by many of the programs listed. With regard to instructional designs in conflict with these goals, the PRLDEF stated:

> Supplementary instruction is given to the plaintiffs for a fraction of, or after, the school day. It is an attempt to compensate for the inadequate instruction given to them the rest of the school day. When the supplementary instruction is ESL, for example, the child is "pulled out" from his regular classroom program and taught by another teacher in a small group setting. For the remainder of the school day the child languishes in the "ongoing daily classroom curriculum" in which he cannot effectively participate. By accepting "participation in the ongoing daily classroom curriculum" as satisfactory, de-

fendants seem to be resurrecting immersion as a means of teaching English. This technique, by which children are forced to remain in English monolingual classes and absorb the new language from their peers, is in conflict with the HEW mandate to take affirmative steps to rectify language deficiency.[149]

The Board failed, then, to demonstrate to the satisfaction of the PRLDEF how each of the programs listed rectified English-language deficiencies and opened the instructional program to the affected children. The PRLDEF also criticized the Board's failure to mention learning in its objectives; it argued:

> Acquiring a new language and having "access to material" cannot be equated with educational opportunity, or in any way reflect the essence of learning. . . . Learning, as plaintiffs have already set forth in their memorandum, is a dynamic process which includes psychomotor, linguistic, cognitive and conceptual processes which reach far beyond "access to material."[150]

With regard to the instructional program, the PRLDEF concluded that the defendant's memorandum did not manifest a consistent or structured effort to achieve its defined objectives:

> Moreover, the Board never defines the "needs" they refer to nor the instructional methods which would best address the different "factors" which would affect these needs. There is little doubt, however, that such definitions of needs and goals for other children in the school system have been articulated by defendants in the context of goals and methods. Again, defendants' school system operates under double standard and discriminates against plaintiffs.[151]

Although the Board referred to the need for flexibility in its administration of programs to respond to individual and group differences, the PRLDEF suggested that:

> Any assertion that the defendants have determined the specific needs of plaintiffs, or that programs have been arranged throughout the city's schools in a systematic way to meet these individual needs, is untrue. Twice in the course of this lawsuit, defendants have attempted to discover by way of surveys what happens to Hispanic children in their schools.[152]
>
> They do not know where programs are in operation, the substance of those programs, and who is receiving them. Whether a child receives a particular one of the eleven programs is not based upon his particular needs, but rather on the fortuitous availability of that program in the child's school.[153]

The PRLDEF contested the Board's claim that budgetary and personnel limitations were inhibiting its operations. First, as noted in the May 20 memorandum, once jobs are made available, recruitment of trained personnel becomes easier. The PRLDEF concurred that "insufficient funding by the city is the major obstacle" to the delivery of programs and services; however, requests by the Board had not only been substantially pared, but the requests themselves, according to the PRLDEF, had been insufficient. In its Budget Estimate for 1974-75, the Board itself characterized its requested increase of $14,500,000 for bilingual education as "pitifully small" when compared with the needs of the students. It described the program as "vital" and among its "highest priorities."[154] The Mayor had reduced the allocation to $11,000,000, and there was a strong probability that it would be cut again by the Board of Estimate. However, the PRLDEF argued, political tactics were irrelevant to the mandate to establish the program:

> That a school system is required to allocate whatever funds are necessary to eradicate unequal educational opportunity is beyond dispute. When a violation of federal law is found, particularly when invidious discrimination is involved, it is the duty of the court to design the most suitable and effective remedy regardless of cost. As stated by this Court in *Justice* v. *Board of Education*, 351 F. Supp. 1252-1263 (S.D.N.Y., 1972), "the rights given by paramount federal law are not to be nullified because it costs money to honor them.[155]

The Board Reacts to Aspira's Plan

In its reply memorandum to the court, the Board argued that the proposal made by Aspira was too narrow, inasmuch as it applied largely to elementary school children, who are beginning to learn to read, without substantial recommendations for higher instructional levels. In this regard, Aspira had submitted, as appendices to its plan, a junior high school and a high school bilingual program models. However, the test of the plan did not make specific recommendations for these higher instructional levels. Aspira maintained that the four instructional elements proposed were largely applicable to all levels of the instructional programs; the Board argued that these did not provide for individual needs and experimentation.

The Board also took exception to Aspira's plan, considering it contrary to the Board's goal of integrating and mainstreaming pupils and personnel. The Board stressed the importance of integrating the non-English-speaking child into the mainstream of the school's activities and curriculum.[156] With regard to personnel recommendations in Aspira's plan, the Board argued that Aspira was proposing a violation of the licensing system required by the New York State Education Law[157] and believed by the Board to be "a necessary and useful system for assuring a teacher's competency in the particular area in which he is to teach."[158] Aspira had recommended in its memorandum that, in light of the allegations by the Board that there were inadequate bilingual personnel available, "a teacher unlicensed to fill a position for which he demonstrates competence should be allowed to teach."[159] Aspira proposed that a bilingual teacher who possesses a license to teach Spanish, for instance, be allowed, where appropriate, to be a bilingual teacher in a subject area if he can demonstrate competence in teaching a subject area bilingually and if he has an adequate background in the subject. The Board's argument that such licensing is

necessary was not without basis. Title VII specifies the requirements for instructional personnel, and these requirements were published in the manual distributed to project applicants and grantees in 1971. It was made very clear that the special skills and qualifications of individuals in the programs were to be "in addition to the qualifications required of all instructional personnel in the school system."[160] Aspira had recommended that personnel for the proposed program should be recruited from Spanish-speaking communities; the Board acknowledged that this had been and would be part of their efforts, but further stated: "We oppose, however, any system which would establish quotas or . . . tend to exclude or make more difficult the inclusion of personnel who are otherwise qualified but are not from the Spanish-speaking communities."[161]

The Board further argued that objection to such inflexibility was supported by the New York State Board of Regents in its policy statement on bilingual education, which defined and established a broad framework within which to develop bilingual programs. The four general categories of bilingual education for non-English-speaking pupils "differ in the degree of emphasis placed on linguistic and cultural development and maintenance."[162] The four categories listed by the Regents included: transitional, monoliterate, partial, and full bilingualism. Also in support of the Board's argument was the lack of specificity in both the *Lau* decision and HEW guidelines regarding what constituted an appropriate remedy.

Finally, the Board asked the court to take notice of the fact that all the "models" of programs submitted in Aspira's plan were programs then in operation in New York City schools. This was evidence that the Board's commitment to meet the problems of children with language difficulties was being honored.

Judge Pressures Parties to Define Points of Agreement and Dispute

In early June 1974, meetings were held between the parties and the judge. The court set itself a June 24 deadline to determine whether mediation was possible in this suit. A joint statement was prepared by attorneys and representatives of both parties and was submitted to the judge on June 19, 1974, by Corporation Counsel. Prior to the submission of this agreement and throughout the entire process, Aspira and the PRLDEF encouraged continuous involvement in the decision-making process by experts in education at the national level and especially by Puerto Rican leadership in the field of education.[163]

However, later developments were to show that neither side had been completely effective in preparing its respective clients and classes with regard to the alleged points of agreement, much less the final outcome of the continued negotiations. This will be discussed in subsequent chapters.

Issues in Dispute

The question of describing the group of children affected by the *Lau* decision was a key issue of dispute between the parties. In its own May 23 memorandum to the court, the Board had used thirteen different phrases when referring to the group of children in question. These included:

1. "Children whose substantial difficulty with the English language excludes them from effective participation in the educational program"[164]
2. "children with language difficulty"[165]
3. "students with language difficulty"[166]
4. "children with moderate or substantial language difficulties"[167]
5. "children with English-language deficiencies"[168]
6. "non-English-speaking children"[169]
7. "the language-handicapped children"[170]
8. "Spanish-speaking children"[171]
9. "affected students"[172]
10. "language-disadvantaged children"[173]
11. "children from non-English-speaking homes"[174]
12. "children from other language groups"[175]
13. "children of Puerto Rican background"[176]

Aspira had also used varied terminology to describe these children. In its initial complaint, the class of children represented was described as: (1) children who speak, read, comprehend, or write English with substantial difficulty or not at all; (2) children who primarily speak Spanish; (3) children who either are not receiving or are receiving inadequate educational services that take into consideration their linguistic needs.[177] Similarly, in subsequent memoranda, different descriptions of the class of children appear.

At this point both parties attempted to rely on descriptions included in HEW guidelines and regulations, the *Lau* majority ruling, and the opinions accompanying Justice Douglas's majority opinion. The fact that there was a lack of specificity on either side as to the children affected was understandable in light of the nature of the litigation. Aspira hoped to include the greatest number of children. The Board, on the other hand, was in the midst of conducting a survey of the numbers of children involved.

The question of how many children were involved was a major one, since the litigation was brought on the grounds that not enough attention had been given to the needs of this group of children. The Board acknowledged that it had never developed valid tests that could reliably describe the skills and the needs of the children in question. It claimed that laws, attitudes, and the absence of resources were all responsible for the lack of such instruments. At that particular time, however, the economic crisis was such that the Board knew that it could not obtain the necessary funds to provide hundreds of thousands of children new instructional programs and services. Given the pressures of the approaching UFT contract negotiations, together with the

financial crisis, the Board reasoned that it was important that the class of children determined to have rights pursuant to *Lau* should be as small as possible. On the other hand, it was important to Aspira that the group of children be as large as possible. In fact, the original class Aspira described purportedly encompassed 182,000 children. Within this group Aspira had included children who spoke and understood English but who functioned far below their writing and reading capacities in English and Spanish as a result of the alleged past discriminatory actions of the Board; Aspira had hoped initially that through the suit it could obtain compensatory educational programs for this group. However, *Lau* did not address the question of compensation for past failure, and this question remained to be litigated. Aspira and the PRLDEF agreed that they would isolate and sue only on behalf of that group of children from the original class that met the description of *Lau* and the HEW regulations. They hoped that an appropriate program would be set up promptly for that group of children. It remained as a possibility that at a later date they would sue for the remainder of the original class of children.

In a letter to the Board's counsel, the PRLDEF stated that there were twelve points of agreement and six points of disagreement between the parties. According to the PRLDEF, the disagreements included:

> "1. Aspira maintained that *Lau* included more than Category II children. The Board maintained that only Category II children had rights under *Lau*.
>
> "2. Aspira maintained that except for a combination of all four components of a bilingual program, none of the Board's programs, whether individually or in combination, met the needs of Categories I and II children. The Board maintained that any of their programs, individually or in combination, met these needs.
>
> "3. Aspira maintained that *Lau* required more than a substantial effort and that effectiveness was the criteria. The Board maintained that a substantial effort was sufficient to meet *Lau* requirements.
>
> "4. Aspira maintained that the acceptance of the child's culture and the teaching of native language arts must be a part of any program, effective in fulfilling the requirements of *Lau*. The Board denied that either the acceptance of a child's culture or native language arts (except of Spanish-speaking Category II children without reading skills) was required by *Lau*.
>
> "5. Aspira maintained that a child's exclusion from effective participation in the instructional program and the denial of equal benefits due to the child's English-language deficiencies automatically establish his rights under *Lau*. The Board maintained that only a child who received no services whatsoever and who was unable to speak or comprehend English at all had rights under *Lau*.
>
> "6. Aspira maintained that the programs given to Category I and II children must be ultimately determined by the court, employing the HEW guidelines and the decision in *Lau* as the standard. The Board maintained that the programs given to these children must be left to the informed judgment of appropriate school authorities."[178]

Meetings between attorneys for both parties on these issues continued throughout June of 1974. On June 19, the first of what were to be many joint statements was submitted to the judge. In a letter to Judge Frankel, accompanying the joint statement, James Greilsheimer, Corporation Counsel identified two areas in which parties could not reach an accord. First, the Board insisted on the stipulation that the program's implementation was subject to the availability of both sufficient funds and adequately trained teachers and personnel. The PRLDEF refused to agree, on grounds that the program was necessary to fulfill the constitutional rights of their clients, and, therefore, could not be conditioned by the availability of funds. Second, the Board wanted the agreement to include all groups of children whose native language was not English. The PRLDEF felt that it could not sign such a statement insofar as it did not represent children of other than Spanish-speaking groups.[179]

An Agreement Is Reached

A Consent Decree Is Drafted But Not Without Conditions and Conflicts

Upon receipt of these documents and after review of the legal issues, Judge Frankel concluded that there was sufficient ground for mutual agreement. He asked both parties to develop jointly a consent agreement, termed a "consent decree." The PRLDEF argued that it could not recommend to its clients that they enter into such an agreement without certain conditions: the agreement reached would have to be court-ordered and would have to contain provisions for reporting, thereby, allowing the court to maintain jurisdiction until such time as the program was implemented; the agreement would also have to require immediate implementation of all four program components, as well as require monitoring by the court and the plaintiffs.

The Board continued to insist that the city's economic crisis and personnel contracts would not allow for a broad-based implementation of the entire program proposed. The judge indicated to both parties that there would have to be a compromise; more than twenty months of costly litigation had already been expended on the suit. The taxpayers should not be subjected to a further burden pending settlement of the suit. Aspira would have to reconsider its insistence upon the four elements of the program it proposed. The Board, on the other hand, could not base its inability to provide that program to children it acknowledged as eligible under *Lau* on issues of finance or contracts. It was noted that the judge had the power to order the city, if necessary, to float bonds to meet its responsibility under federal law. In addition, the judge held that any contracts that conceivably might conflict with the rights of children were superseded by federal mandates. Finally, both sides were pressured indirectly to comply with the

judge's wishes. After all, if the questions were put to trial, he would preside and any party in his disfavor might suffer by it.

Throughout July and August of 1974, the initial joint statement was developed further into a full agreement. This period of interchanges was later described by the judge as "long and sometimes bitter times";[180] there were "bargaining sessions when the court was driven to speak as more than a mere moderator, occasions when the Board was chided for what seemed tardy and grudging concessions."[181] Attorneys prepared the groundwork for the few "bargaining sessions" that were to include their clients. In these cases, Chancellor Anker and a few of his selected administrators represented the Board. Mario Anglada, Executive Director of Aspira of New York, consistently represented the class of plaintiffs; only in a few instances did Aspira include others in these negotiations.[182]

A point of conflict was the result of the survey conducted by the Board. This already had been an issue of long dispute, including initial problems when the PRLDEF insisted that the Board take the PRLDEF's recommendations into consideration, in terms of the content and procedures for conducting the survey.[183] The judge had to intervene repeatedly in this matter.

It was on July 1 that the preliminary report of the survey was submitted to the judge.[184] Throughout July, the Office of Corporation Counsel made available to the PRLDEF the survey's findings[185] and the results of spot checks,[186] which had been designed to ensure reliability.[187] The analysis of the survey had been contracted to an independent consultant firm.[188] However, spot checks were conducted, as agreed to by both parties, by personnel of the Office of Bilingual Education (OBE) of the Board of Education and representatives and/or attorneys for both parties.[189] The PRLDEF felt that spot-check findings had a strong bearing on the results of the survey and pressed for statistical analysis, which would test that assumption.[190] Both parties had agreed to this. In the end, the PRLDEF asked the court to void the findings of the survey because the spot checks had revealed an extreme discrepancy when compared to the Board's own findings only six months earlier. After much dispute, all parties agreed that the findings of the survey would not be accepted; rather, as part of the agreement being formulated, there would be a provision for the development of an "improved method of accurately and systematically identifying and classifying children" entitled to the program.[191]

At the same time, agreements and compromises were being reached with regard to the consent decree. In late August, the Corporation Counsel submitted to the judge a draft of the consent decree reached by both parties. The PRLDEF complained that the draft submitted by the Board did not accurately reflect agreements reached and that this was continued evidence of bad faith on the part of the Board.[192] (This was probably an attempt to strengthen the PRLDEF's own position and its request that the court maintain jurisdiction of the case and implement strong reporting and compliance stipulations.) Negotiations again took place in the presence of the judge, and a final "version" of the agreement was reached. The only thing remaining was the formal signing of the agreement by the official representatives of both parties.

In an effort to obtain the approval of the members of the Board for the signing of the agreement, Chancellor Anker sent a communication to them describing the essential differences between the August 20 draft and the final one plus a summary of the key disagreements between the parties.[193] To the astonishment of the court, the members of the Board refused to sign the agreement. Judge Frankel quickly called the president of the Board, then newly elected, the chancellor, the attorneys, and the executive director of Aspira into his chambers. He expressed his dismay over the loss of many months of hard work that the agreement represented. There being no other recourse, he consulted his calendar to set a date for the trial,[194] but, after consultation with its attorneys, however, representatives of the Board decided to sign the agreement.

Judge Frankel was later to remind the Board of its resistance in a decision granting Aspira attorneys fees. He recalled "the long and sometimes bitter times" and that

> even though 18 or 20 months of struggle and a motion for summary judgment led to negotiations for a consent decree, there were bargaining sessions when the Court was driven to speak as more than a "mere moderator," . . . occasions when the Board was chided for what seemed tardy and grudging concessions, and a penultimate stage at which the Board's adversary passion led to blatant infringement of First Amendment rights. To the very end, it must be said, steady and energetic pressure by plaintiffs' attorneys was required. . . .[195]

The Program

Children entitled to the program. The agreement applied to children whose English-language deficiency prevents their effective participation in the learning process and who participate more effectively in Spanish.

Identification of children. The decree ordered the Board to develop a classification system that would identify children eligible for the program on the basis of their ability to read, write, and speak both Spanish and English.

The program. There were three basic elements to be provided in the education program:

1. intensive instruction in English,
2. instruction in subject areas in Spanish,
3. instruction to reinforce the child's Spanish-language skills.

Wherever possible, materials used shall be sensitive to and, where appropriate, shall reflect the culture of the children participating in the program.

Pilot schools. By October 30, 1974, elementary, junior, and senior high schools will be identified to serve as pilot schools. These schools will implement the pro-

gram. These schools shall serve to demonstrate the implementation of the program and to train personnel.

Personnel. Professionals in the program must:

1. be fluent in the Spanish and English languages, and
2. possess the necessary professional skills.

In order to provide such personnel, the Board was required to implement an affirmative action plan.

Timetable. The identification of eligible children was to have taken place by October 1, 1974. The program was to have been provided to the entitled children by September 1975.

Aspira's continuing role. As part of the agreement, the Board was required to submit monthly reports and school data reports to the court, to Aspira and to the PRLDEF, documenting its compliance with the decree. Also, Aspira was to be consulted on matters related to the implementation of the program.

Reaction to the Suit

Reaction to the consent decree was mixed. The *New York Times* editorial response to the suit was that it was "depressing" that school authorities continued to wait for the courts to draft them into process, reminding them of their responsibilities—particularly in the light of *Lau*. "Surely the issue need not be tested separately for every foreign-language group of children." It puzzled over why litigation was required to effect what had long been considered pedagogically sound—a program, not designed to downgrade the importance of English, but to prevent nonbilingual students from being put "into cold storage."[196]

The *New York Daily News* editorial was not supportive. Much later the newspaper deemed the consent decree "a headache" – one the Board need not have brought upon itself "had it not yielded so readily." It mused, after the fact, that "certainly a sound case could have been made that in an English-speaking society, the duty of a school system is to provide all its students with a firm grounding in that language."[197]

El Diario's editorial of September 4, 1974, termed the decision "a victory for Bilingual Education."[198] The *New York Post* editorial expressed approval of the consent decree, but raised objections as well.[199] In a memorandum accompanying the court order, Judge Frankel considered the consent decree the result of a "painstaking course of skilled, imaginative and high-minded endeavors." He added that in the final months of negotiations he had witnessed "a display of constructive and creative lawyering."[200]

At the press conference called by the Board to announce the signing of the decree, Chancellor Anker described himself as "happy" with the agreement and emphasized that it had been reached after long meetings with Aspira representatives. He looked "forward to continued harmonious relationships with Aspira in behalf of our young people."[201] Anker conceded that bilingual education was a necessity for Spanish speaking students with "discomfort" in English but warned that "many people . . . believe that bilingualism could become a source of divisiveness."[202] Although it sanctioned teaching science, math, or history in Spanish, the Chancellor cautioned that the "basic thrust" of the program must be English proficiency. He stressed that other groups learned English through maximum exposure to English.

This theme, so rooted in the Protestant Ethic and so common during the early 1960s, asserts that other groups have made it in America—new groups should make it on the same terms. The theme was echoed in an article appearing on September 27, 1974, in the *Washington Post*, "Bilingualism and the Melting Pot," in which the author, Stephen S. Rosenfeld, dismisses the potential gains of a bilingual educational approach for fear of its giving children an excuse for not buckling down hard on English."[203] Additionally, he proposes that

> it is not clear how educating children in the language and culture of their ancestral homelands will better equip them for the rigors of contemporary life in the United States. I do not understand why, in the copious material presented to Congress in support of bilingualism, there was not the faintest suspicion expressed that the program might make kids even less competent and less motivated to deal in a competitive English speaking society. . . . Will it not also direct his attention from learning English and the social skills that accompany the learning of English. . . . ?[204]

Rosenfeld raised a note of concern, warning the American people that

> with practically no one paying heed, the Congress has radically altered the traditional way by which immigrants become Americanized. No longer will the public schools be expected to serve largely as a "melting pot" assimilating foreigners to a common culture.[205]

In the years following the signing of the consent decree community and school officials faced with the complex task of implementing the broad-based bilingual educational program were also faced with the attitudes and fears reflected in this article.

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[31] "A National Puerto Rican Coalition," *El Diario*, 21 August 1972.

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[33] Vazquez Interview.

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[35] Examination Before Trial of Aspira of New York, Inc., by Mario A. Anglada, 72 Civ. 4002 (S.D.N.Y. July 12, 1973). Appendixed: "Creating Resources for Educational Opportunity."

[36] "Jurisdiction" is defined as "the right or power to administer Law or Justice; the territory over which such authority extends." See Black, *Law Dictionary*, 4th ed. (1951).

[37] The legal meaning of "equality" has been the subject of much debate in the courts in cases related to school desegregation, school finance, the selection of students for special programs and other education-related cases. For a discussion of the concept of equality see Charles A. Tesconi and Emanuel Hurwitz, *Education for Whom? The Question of Equal Educational Opportunity* (New York: Dodd, Mead & Co., 1974).

[38] Board of Education Motion to Dismiss at 28, 72 Civ. 4002 (S.D.N.Y. November 16, 1972) (unreported).

[39] Memorandum in Opposition to Motion to Dismiss at 5, 72 Civ. 4002 (S.D.N.Y. December 26, 1972) (unreported Memorandum).

[40] *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

[41] "Equal educational opportunity" is also a concept that has a long history of public and judicial debate and precedent. In this regard see David L. Kirp, "Law, Politics, and Equal Educational Opportunity: The Limits of Judicial Involvement," *Harvard Educational Review* 47 (May 1977):117-37.

[42] A statutory claim is one which conforms to the provisions of a law.

[43] Aspira, Memorandum in Opposition to Motion to Dismiss at 13.

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[45] In recent years many public and private organizations have studied the socioeconomic condition of the Puerto Rican and the quantity and quality of services available to the community. Among these are: U.S., Department of Labor, Bureau of Labor Statistics, *The New York Puerto Rican: Pattern of Work Experience*, Regional Report No. 19 (May 1971); Idem, *A Socio-Economic Profile of Puerto Rican New Yorkers*, Regional Report No. 46 (July 1975); Idem, *The Jobs Puerto Ricans Hold in New York City*, by Lois Gray (October 1975); U.S., Department of Commerce, Bureau of the Census, *1970 Census of Population: Subject Reports—Persons of Spanish Origin in the United States*, PC(2)-1C (June 1973); Idem, *1970 Census of Population: Subject Reports—Puerto Ricans in the United States*, PC(2)-1E (June 1973); Idem, *Persons of Spanish Origin in the United States: March 1975*, p-20, No. 283 (August 1975); National Puerto Rican Forum, *A Study of Poverty Conditions in the New York Puerto Rican Community* (New York: Puerto Rican Forum, 1970); Puerto Rican Inter-Agency Council, "Survey of Social Services and the Puerto Rican Community," New York, 1973 (Mimeographed.); and Kal Wagenheim, *A Survey of Puerto Ricans on the U.S. Mainland in the 1970's* (New York: Praeger, 1975).

[46] U.S., Commission on Civil Rights, *Puerto Ricans*, pp. 44-52.

[47] *Voting Rights Act of 1965, Statutes at Large* 79, sec. 437 (1965), *U.S. Code* vol. 42, sec. 1973b(e).

[48] Puerto Rican Organization for Political Action v. Kusper, 490 F. 2d 575 (7th Cir. 1973); Torres v. Sachs, 73 Civ. 3921 (S.D.N.Y. September 26, 1973); Arroyo v. Tucker, 73 Civ. 2247 (E.D. 2 Pa. March 25, 1974). Katzenbach v. Morgan, 384 U.S. 641 (1966).

[49] "Indispensable parties" are parties who share responsibility over actions or questions being litigated. Black, *Law Dictionary*, p. 85. Regulations governing a determination in this regard lie in *Federal Rules of Civil Procedure*, Rule 19.

[50] "*Amicus curiae*," from the Latin, means "friend of the court." Essentially, it is a person or party who is called in or allowed to advise the judge.

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[52] He played an important role in bringing about the hearings held by Congress in 1967. U.S., Congress, Senate, *Hearings of the Select Committee on Equal Educational Opportunity—8 Parts*, 91st Cong., 2nd sess., 1967.

[53] Lau v. Nichols, 414 U.S. 563 (1974).

[54] Aspira, 58 F.R.D. 62 (S.D.N.Y. 1973).

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CHAPTER III: POLICY DETERMINATION, 1974-76

References for Chapter III begin on Page 98

Introduction

Upon the signing of the consent decree in August of 1974, the process of policy change entered a new phase. This new phase involved policy determination, which was brought about through the reform or accommodation of existing policy.[1] This phase was followed by the policy implementation phase, which in turn resulted in further policy reform or accommodation in many cases. These phases of the change process were at least as complex, if not as difficult, as the previous phases studied here. Factors that particularly hindered reform and implementation processes included: (1) the substantial numbers of children of limited English-speaking ability in need of special instructional services; (2) the size of the educational system involved; (3) the long-entrenched bureaucratic structures of the Central Board of Education and the relatively new Community School Boards; (4) the financial crisis that New York City grappled with during this period; (5) the lack of broad-based public awareness of the history, rationale, and goals of Aspira and the consent decree program; (6) limitations on the part of Aspira and the PRLDEF in terms of the resources necessary to support and sustain efforts to monitor the program's implementation and the ongoing negotiations and consultations with the Board and its representatives.

The Analysis of Policy Reform

The policy change process is a dynamic one. Change in one area of institutional policy often causes change in other policy areas. Nathan Glazer has cautioned that

> it is illusory to see social policy only as making an inroad on a problem, there are dynamic aspects of any policy, such that it also expands the problem, changes the problem, generates further problems.[2]

The first two years of the implementation of the consent decree programs are illustrative of this point. Changing the English-only language-of-instruction policy, for instance, was not enough to guarantee that all children entitled to bilingual instructional programs would receive them. Concomitant changes in other areas, including assessment and grouping, minimum educational standards, finance, personnel, and parental rights, were also necessary to implement the consent decree program. The decree provided a timetable for the design and implementation of a number of policies. Cognizant of the implications of such changes in a massive educational structure, the consent decree required "full implementation of the Program for all children within the class by September 1975"[3] (though the plaintiffs had pressed for a September 1974 deadline for implementation), thereby providing a full year for planning and preparation.

In terms of other policy areas the consent decree provided that "an improved method for accurately and systematically identifying and classifying children who are Spanish-speaking or Spanish-surnamed will be designed and implemented by the Board of Education"[4] with "the objective of implementation by October 1, 1974."[5] A policy governing minimum educational standards for educating children of limited English-speaking ability, was to be promulgated by the Board and the chancellor by April 1, 1975. Such standards were to become effective by September 1, 1975.[6] In addition, the consent decree provided that the chancellor identify, by October 30, 1974, those schools which would serve as pilot schools. Such schools would serve the purpose of "demonstrating on a systematic basis to school personnel on a borough-wide level the means of developing, implementing and operating the Program."[7] Similarly, by October 18, 1974, the Board was to submit to the court and the plaintiffs "an overall plan detailing the relevant elements in the development and implementation of the Program and setting forth a timetable."[8] Finally, the consent decree required that the Board make every effort to obtain the funds necessary to carry out the program and to recruit and train (retrain) the personnel necessary to implement it.[9] In order to carry out this multifaceted effort it was necessary to issue many new policies or to provide for the accommodation of existing policies.

Previous sections of this study have analyzed the causes leading to policy change from a historical and sociopolitical perspective. These were placed within an organizational framework by identifying change factors and processes on community, city, state, and federal levels. The role of the court as a change agent was then documented within the context of the suit's litigation. This did not represent the end of the policy change process; this section analyzes the policy formation process that took place during the two years following the signing of the consent decree. The study of the impact of these new policies on the education of children of limited English-speaking ability and subsequent changes in policies are beyond the scope of this work.

The researcher chose to approach the analysis of policy determination by isolating key issues and identifying and describing the factors related to the causes for and the substance of policy reform. Since the consent decree was court mandated and remained under

the enforcement powers and scrutiny of the court, this study of policy determination can contribute to an understanding of the policy reform process within the context of litigation. Litigation procedures produce substantial documentation of the positions taken by litigants and experts in the field on policy issues as these were identified, discussed, negotiated, and finally defined. The researcher identified other forces which also played a role with regard to the reform of specific policy issues.

A descriptive approach within a legal framework was chosen because a review of the literature on educational innovation and policy offered no appropriate models or frameworks within which to analyze policy change which was an outgrowth of the consent decree. Studies and theories of educational change have largely ignored the problem of policy implementation (particularly in cases in which policy determination and policy implementation occur concurrently), have serious methodological or conceptual shortcomings, or have studied only selected factors related to the impact of institutional innovations. There is a need to understand and develop models for the study of the role courts have played and can play as agents for policy change. As a result, there is a paucity of information concerning the conditions influencing the determination and implementation of organizational innovations.

In reviewing the literature on implementing institutional innovations, Gross, Giacquinta, and Bernstein asserted that

> the major explanation offered for the success or failure of organizations to implement innovations assumes that members of an organization are initially resistant to change and that it is the ability of management or a change agent to overcome their resistance that accounts for the success or failure of efforts to implement innovations. We argued that this explanation ignores important considerations about obstacles to which members who are not resistant to change may be exposed when they make efforts to implement innovations, about the possible importance that management, as part of the role set of subordinates, may play in creating or overcoming these obstacles, and about the possibility that members who are not initially resistant to an organizational change may later develop a negative orientation to it.[10]

Furthermore, they concluded,

> most social scientists have not recognized the need to conceptualize the success or failure of the implementation of organizational innovations as the result of a complex set of interrelated forces that occur over an extended period of time after the innovation has been introduced. Our review indicated that there was a great need for in-depth studies of organizational innovations in order to isolate factors that inhibit and facilitate their implementation. Such studies were also needed if heuristic models and hypotheses about the implementation of organizational innovations were to be developed.[11]

Experts in the field of policy analysis have emphasized "the systematic identification of the causes and consequences of public policy, the use of scientific standards of inference, and the search for reliability and generality of knowledge.[12] This view of policy analysis is reflected in such works as Harmon Ziegler and Karl Johnson's *The Politics of Education in the States*[13] and Arthur Wise's study of school finance policies, *Rich Schools, Poor Schools*.[14] Policy studies regarding Head Start,[15] busing for integration,[16] Title I,[17] the Economic Development Administration,[18] and others have not only contributed to the field of policy analysis but, in most cases, have had an impact on policies and practices.

The consent decree resulting from *Aspira* might certainly be viewed as a policy statement, except that "policies normally contain both goals and the means for achieving them."[19] The consent decree left unanswered the majority of specific institutional policy questions which were vital to the implementation phase. This chapter documents the processes and ultimate policy decisions reached. These decisions were influenced by Aspira and the court; the decree provided that the Board consult Aspira "with respect to the development and implementation of all items" contained therein.[20] The consent decree did not constitute the last involvement of the court. Educational policies germinating from the consent decree remained subject to scrutiny by the court. Judge Frankel cautioned at the signing of the consent decree that "the decree contemplates opportunities for further orders and adaptations in the exercise of the Court's equitable powers as further circumstances appear. . . ."[21] The consent decree also specifically stipulated that "the Court retains jurisdiction of this action for all purposes, including the entry of such additional orders as may be necessary and proper."[22]

The study of specific policy issues generated by the consent decree is difficult because of the interrelationship of the issues. In order to provide the reader with a framework within which to place these issues, this chapter will first summarize the major events of the first two years of implementation. This is followed by an analysis of the consent decree's impact on selected policies related to the education of language-minority children. Policies selected are those judged to be of interest and applicable to other school districts and those that are not limited to future application in the New York City public school system. The policies analyzed include those in the areas of: assessment and grouping, minimum educational standards, personnel, finance, and parental rights.

Implementation 1974-76

The 1974-75 school year began no differently from most school years for New York City's school system. There were a large number of particularly difficult realities to be faced: a financial crisis requiring cuts in personnel and services; an investigation by the Office of Civil Rights of HEW on charges of discrimination; a state mandate to mainstream tens of thousands of special education children throughout the schools; ever increasing tests, if not challenges, of the Central Board's powers and authority by Community School Boards to

carry out their educational programs; and, finally, a court mandate to implement the first phase of the consent decree program for tens of thousands of eligible children.

At a press conference on August 29, 1974, announcing the signing of the consent decree, Chancellor Anker warned of the enormity of the task and announced the appointment of a task force of key Central Board personnel. The task force had the mandate to "coordinate the implementation of the agreement to which the Board of Education is committed."[23]

The tasks ahead were complex. Chancellor Anker maintained that the consent decree program constituted "a major effort to implement further fundamental Board policy that every opportunity should be offered for all children in the city's schools to be successful in learning."[24] In terms of specific policy for educating children of limited English-speaking ability, however, the policy of requiring native-language instruction in substantive subject areas constituted a major reform, based on its compulsory nature. As has been established herein, the policy of "allowing" native-language instruction had been articulated by the Board and its authorities prior to the signing of the decree. Though the decree required that "defendants shall provide for full implementation of the Program for all children within the class by September, 1975,"[25] the Board was required to select and place into operation in six months a "sufficient number" of schools (elementary, junior, senior high schools) which were to serve as training and model learning centers by the second semester of the 1974-75 school year.[26] The schools' tasks were substantial and included: (1) the development of a program design and timetable for the decree's implementation by October 18, 1974;[27] (2) the development of minimum educational standards by April 1, 1975;[28] (3) the development of personnel qualifications and personnel recruitment and training programs to ensure that the program could be fully implemented by September of 1975; (4) the development of assessment instruments for "accurately and systematically identifying and classifying children who are Spanish-speaking or Spanish-surnamed" by October 1, 1974;[29] and (5) the development of instructional materials for the delivery of the instructional program.[30]

These tasks required the coordination and cooperation of thousands of school administrators. Every Community School District would be involved in implementation since each had a population of Spanish-surnamed children. In addition, every major division of the Board, including the Division of Personnel, the Division of High Schools, the Division of Educational Planning and Support, and the Division of Special Education, was of necessity involved in the planning of implementation of specific aspects of the program.

In an effort to obtain the cooperation of the Local School Boards, Chancellor Anker disseminated a series of memoranda and materials to Community School Board members, district superintendents, and principals. Resistance to the program's implementation became evident early. Much of this resistance was rooted in the many questions and issues unanswered by the consent decree.[31]

Issues Unanswered by the Consent Decree

Though the consent decree prescribed essential elements of the program, it only outlined the instructional elements of the program and established parameters for a time frame, in terms of implementation design. Essential questions related to who was responsible for what and what was to be implemented became the subject of debate for years following the signing. There were several very essential issues and questions which were raised quite early in the implementation phase. These included: (1) Were all entitled children required to participate in the program, regardless of parental or personal objection? (2) What was Aspira's role in the implementation of the program? (3) What was the latitude of powers of the local school boards in deciding whether to and/or how to implement the program? (4) Was the Board required to implement the consent decree program in all high schools?[32] (5) Were children in any or all categories of special education,[33] meeting the linguistic criteria established in the consent decree, entitled to the program? (6) Were bilingual instructional programs, already operating in the schools prior to the signing of the decree and not necessarily meeting the specific design of the consent decree, in violation of it (despite the possible regulations or requirements of their funding sources)? (7) Were functionally bilingual children who were participating in diverse bilingual instructional programs now not entitled to the program? and (8) Would the implementation of the decree require changes in personnel and licensing procedures?

Clearly all these and other unanswered questions relate to more general questions of policy and power which will be discussed in this chapter. The magnitude and complexity of these issues might serve as a more appropriate backdrop for the reader of the following overview of the first two years of implementation—the two years in which policies were determined which responded to, and to some degree dealt with, these issues.

Preparation for Implementation 1974-75

Despite the many unanswered questions, preparation for implementation of the first phases of the program began in September 1974. A test which had been on the drawing boards at the time of the signing of the decree was completed and administered in October of 1974, under Aspira's objections. The results of this test were disregarded, however, and a new examination ordered. According to teachers interviewed by the Community Service Society, an independent group, "the instructions were unclear, the pictures which the students were to identify were not discernible."[34] Aspira argued before Morris P. Glushien, the attorney appointed by Judge Marvin E. Frankel to hear and decide points of dispute between both parties, that the test was not valid because

it did not measure the children's ability to speak, read, write, or comprehend English and Spanish.

New examinations were developed at a cost estimated by the Board at one-half million dollars.[35] The examinations were called a Language Assessment Battery (LAB) and included subtests for the entire school age range with English and Spanish subtests; the battery is more commonly referred to as the LAB. Once again, the validity and reliability of the examination was disputed by Aspira. Despite these objections, the Board in negotiation sessions with Aspira's attorneys placed the cutoff point for eligibility for the program at the twentieth percentile. In the spring of 1975 the LAB was administered.

Minimum educational standards were issued by the Chancellor on July 21, 1975, after lengthy negotiations with Aspira. Pilot schools which were to serve as models for the program's implementation were named in November of 1974, and implementation of the program began in January of 1975. Forty such schools, including elementary, junior, and senior high schools, were named. Criteria for their selection included whether or not the schools were already implementing one or more phases of the program. The only independent group to conduct an evaluation of the pilot schools was the Education Committee of Community Service Society of New York, which issued *A Report on Bilingual Pilot Schools in New York City* in August of 1975. The findings of that study applauded the "atmosphere of excitement and enthusiasm [which] permeated most of the Pilot Schools," the quality of teacher involvement in curriculum and planning, and the teachers' command of both Spanish and English.[36]

The society, however, also pointed out that selecting schools which were already providing bilingual programs may not have been a good strategy because in the end they did not serve part of their function and ". . . they did not serve as models to demonstrate the step-by-step development of a new program."[37] Also, it noted, "initial parental apprehension or opposition to bilingual education was reported to have been encountered in a small number of schools visited."[38] The report concluded finally that: "It is difficult to foresee that anything approaching the Program observed in these Pilot Schools can be replicated city-wide by schools' opening in September of 1975."[39]

An important issue which arose subsequent to the implementation of the pilot schools and the language testing program was the question of whether participation in the program was compulsory or whether parents had the right to withdraw their children. This issue was not resolved until a ruling was issued by Judge Frankel on July 11, 1975.[40]

During this first year, at least two other important components in the preparation phases were also operational. These included the recruitment and training of personnel and the design of specific instructional and program implementation plans. Recruitment and training were coordinated by the Office of Personnel under the directorship of Frank Arricale. Recruitment efforts included ads and announcements in the Spanish media nationally and in Puerto Rico.[41] Training efforts included inservice courses and intensive language programs offered during the summer of 1975. The success of these efforts was questioned by Aspira, particularly the modes and criteria used for selection.

Implementation 1975-76

Although a new test had been developed, the pilot schools had successfully implemented programs, and minimum educational standards had been issued by the Chancellor, the consent decree program was not fully implemented by September of 1975. The school year began in strife, amidst a financial crisis and a teachers' strike. One problem that arose repeatedly was the disputed authority of central headquarters to require the Community School Districts to comply with the consent decree and to meet program deadlines. Community Districts which demonstrated particular resistance included 1, 30, 25, 27, 31.[42]

In July of 1975 Aspira was concerned about the laying off of bilingual teachers[43] in light of the recruitment efforts for the program's implementation in the fall of 1975. Based on complaints received by both agencies, the PRLDEF filed a motion charging that the Board was acting in contempt of court. The PRLDEF sought to prevent the discharge, layoff, or "excessing" of bilingual instructional personnel needed for the program. After asking the Board to respond to the charges, "the court was confronted at that point with a failure by defendants to supply even sufficient information for an intelligent adjudication."[44] Consequently, on August 15, the court ordered the Board to submit by August 25, four categories of information: (1) the number of pupils tested and found to be entitled to the program, (2) the number of children who were not given all or part of both English and Spanish versions of the LAB tests, (3) the number of licensed bilingual and ESL teachers, and (4) the number of licensed bilingual and ESL teachers who were available but who were not yet appointed.[45]

Having received what was deemed by the judge to be insufficient and "insufficiently explained"[46] information, Judge Frankel ordered again on September 9, 1975, that the Board provide information essential to determining the degrees of progress of the Board in complying with the decree.[47] The September 9 court order also directed the Board to complete the testing of children in the class. The United States Commission on Civil Rights reported in its study of Puerto Ricans in the continental United States that as of that month

> there appeared to be sufficient numbers of adequately trained persons available to implement one aspect of the decree, the hiring of trained personnel. But certain schools had not yet hired staff to implement the program. . . .[48]

On August 26, 1976, the Board submitted the available data relevant to the questions agreed to by both parties

and the court at the August 15, 1975 hearing. The judge summarized the Board's data in the following way:

> "1. There are approximately 37,000 pupils actually known now to be eligible for the Program.
>
> "2. Only two of the thirty-two community school districts have reported the actual, as opposed to the estimated, number of pupils eligible for the program for all schools in the respective districts.
>
> "3. Only 52 of 103 high schools have reported number of students eligible for the Program.
>
> "4. It appears that 31,829 Hispanic pupils did not complete at least one part of the English LAB test.
>
> "5. At least 19,870 pupils who scored below the 20th percentile on the English LAB test did not complete at least one part of the Spanish LAB test.
>
> "6. There are 1,018 licensed bilingual classroom teachers and 253 ESL teachers 'currently in the school system' at the elementary and junior high school levels.
>
> "7. There are approximately 1,000 additional teachers, with varying credentials, whom defendants may hire as bilingual classroom teachers available for appointment."[49]

On December 22, the PRLDEF moved again to have the chancellor and the members of the Board held in civil contempt for failing to provide the program to all children entitled to it and for being in violation of the August 15 and September 9 orders with regard to testing and the collection of data on implementation. In reports submitted to the court, the Board reported that in the elementary and junior high schools operated by Community School Boards, over half of the entitled students "were enjoying no part of the program whatsoever."[50] Figures reported by the Board according to Community School District appear in table 3. Even these figures, however, overstated the degree of implementation by the Board. Students receiving only some, not all four, elements of the consent decree program were treated in these compilations as participating fully.

In response to the PRLDEF's motion and the evidence submitted by both parties, the judge issued an order requiring that the Board show cause why it should not be held in contempt of court for its violations of the consent decree and the September 9, 1975 court orders. Specific violations cited by the PRLDEF and the court included: (1) the Board was not providing the Program as required to thousands of entitled students, (2) the Board had not hired the necessary available personnel, (3) the Board was using unqualified personnel in the program, (4) the Board had not completed testing, and (5) the Board did not submit pupil and teacher information as to the program designs for a substantial number of schools.[51]

In February of 1976, six weeks after the PRLDEF's initiation of the contempt action, the Office of Bilingual Education of the Board of Education, Division of Educational Planning and Support, issued more comprehensive data regarding implementation. Those figures revealed that 38.6 percent of the eligible students were receiving all elements of the program, while 37 percent were in receipt of some elements, and 24.4 percent were in receipt of no elements of the program as of February of 1976.[52] With regard to implementation of the program in the high schools, the earliest figures were available in January of 1976. They indicated that 91 percent of eligible students were receiving some or all of the program elements. The figures cited did not reveal "how many were receiving how much of the required program."[53]

Table 3

EXTENT OF PARTICIPATION IN CONSENT DECREE PROGRAM BY SCHOOL DISTRICT

Community School District	Percent of Spanish-Surnamed Entitled Students Not Participating
1	68
2	59
3	70
4	72
5	65
6	23
7	72
8	56
9	27
10	64
11	53
12	32
13	56
14	44
15	25
16	40
17	33
18	33
19	70
20	54
21	65
22	69
23	35
24	23
25	85
26	0
27	81
28	51
29	77
30	100
31	92
32	41

Source: *Aspira of New York, Inc., et al. v. Board of Education of the City of New York, et al.*, 72 Civ. 4002, Slip op. at 11 (S.D.N.Y. October 22, 1976).

After nineteen days of court hearings, which were begun in February of 1976 and concluded in August, 1976,[54] and during which the testimony of many witnesses appearing for both sides was heard, Judge Frankel ruled on October 22, 1976, that the Board of Education was in contempt of court. This decision was reached despite the fact that, by May of 1976, the Board was able to report that 74.5 percent of children entitled to the program in elementary and junior high schools were receiving all elements of the program; 18.2 per-

cent were receiving some elements of the program; and 6.9 percent were receiving no elements at all.[55] Table 4 gives a breakdown by Community School District of the total number of children entitled to the program and the percentage of program elements being received. In May of 1976 the status of implementation of the program in the high schools showed that roughly 79 percent of the eligible students were receiving all elements of the program, 10 percent were in receipt of some elements, and 11 percent were receiving no elements of the program.

Table 4

PERCENT OF STUDENT PARTICIPATION
STATUS OF IMPLEMENTATION OF CONSENT DECREE
SUMMARY – MAY 1976

District	Balance of Entitled Children*	Percentage of Program Elements Being Received†		
		All	Some	None
1	1,364	97	2	1
2	896	33	53	14
3	2,081	64	28	8
4	2,721	90.3	0	9.7
5	693	40.6	38.8	20.6
6	4,801	67	20	13
7	4,194	71.4	22.2	6.4
8	2,372	70	25	5
9	4,429	92.4	5.4	2.2
10	2,261	83	10	7
11	189	26	73	1
12	3,478	88.5	9.9	1.6
13	1,249	63.5	26.5	10
14	2,166	98.9	0	1.1
15	2,224	69	27	4
16	390	30.5	65.1	4
17	889	86	13.2	4.4
18	230	68.7	31.3	0.8
19	2,167	90	5	0
20	1,242	89.5	6.5	5
21	527	68.7	19.4	4.0
22	121	100	0	11.9
23	1,237	44	26	0
24	1,923	85	6	30
25	295	49.2	31.5	9
26	59	0	100	19.3
27	964	0	99.8	0
28	696	32.9	43.8	0.2
29	246	0	98	23.3
30	547‡	N.A.§	P.R.¶	2
31	289	0	88.2	P.R.¶
32	2,901	89.6	9.1	11.8 1.3
District Totals	49,917 −547‡ (49,370) 100%	(36,000) 74.5%	(8,996) 18.2%	(3,398) 6.9%=99.6%

Source: *Aspira v. Board of Education*, 72 Civ. 4002, Compliance Report, May 1976, (Attachment K.) (Unreported Memorandum).

*Entitled children were the total tested minus opt-outs.

†There were three elements to the consent decree program.

‡Estimated.

§Information not available.

¶Pending review of program designs.

Despite discernible improvement of implementation figures, Aspira continued to be concerned about the quality of the program being implemented. The PRLDEF continued to argue that data submitted to plaintiffs was incomplete or insufficient to determine whether the figures reflected (in table 4) constituted "paper compliance"—they maintained that complaints received by the agency indicated that, in some cases, there were discrepancies between figures and programs described in reports and those reported on by individuals providing information to the plaintiffs.[56] Aspira and the PRLDEF maintained that a monitoring program was needed in order to determine whether districts were complying with policies and directives and whether they were reporting accurately.[57] In April and May of 1976 many questions remained unanswered related to testing, personnel, transfer procedures, finance, special education, and the high school programs.

In finding the Board in contempt, Judge Frankel ordered the Board to provide the program to all children. In his decision the judge stated that, on the basis of the record of evidentiary hearings, the Board

> failed steadily and repeatedly to exercise their power and authority so that those they controlled would proceed promptly and in good faith to accomplish the tasks commanded by the consent decree. This failure reflected their own lack of concentrated will to achieve substantial compliance.[58]

Minimum Educational Standards

The first system-wide policy establishing minimum educational standards for children of limited English-speaking ability was a direct outgrowth of the consent decree. Paragraph 4 of the consent decree required the Board and the chancellor, under their legislated powers, to promulgate the school system's policy determining such minimum educational standards

> as shall ensure that the Program shall be furnished . . . and the Chancellor and Board of Education shall be responsible for ensuring that the Program is provided in each of the Community School Districts.[59]

The consent decree also stipulated that this policy must also provide

> that appropriate and necessary personnel are utilized for the Program and that children entitled to the Program are not denied their right to receive said Program, within a school, because of the reduction of personnel appropriate for the Program.[60]

This meant that the policy regarding standards had to relate not only to the program's instructional elements but also to specifications as to pupil eligibility, personnel requirements, and guidelines regarding organizational structure. The policy statement, then, was to be a complex one. As required by the consent decree, the

chancellor shared drafts of the proposed policy statement with at least a dozen organizations, including Aspira and the PRLDEF, giving them an opportunity to comment.[61] Because of the major differences between the Board's and Aspira's proposals for the standards, the question was put before Morris Glushien, the Special Master, who had been appointed by Judge Frankel to settle such disputes.[62] Much of the matter in question related to issues which had not been resolved, including those related to assessment, personnel, and parental rights.[63] One such issue, for instance, which in fact remained unresolved, was whether teachers of English as a second language should have fluency in Spanish.[64]

Special Circular No. 2, 1975-76, embodied the Board's policy regarding minimum standards. It was issued on July 21, 1975. Though the policy statement met the requirements of the consent decree, proponents of bilingual education would probably regard the policy as limited in two significant respects. First, the standards were narrowly applicable to "pupils whose English-language deficiency prevented them from effectively participating in the learning process and who can more effectively participate in Spanish."[65] This was a clear indication that the Board made no commitment to children of other language-minority groups and they were not assured of receiving the program. It was also an indication that this new policy constituted an accommodation of the Board's previous English-only policy. Had the Board reformed its policy position, this new policy would have applied to all children, not only Spanish-surnamed children, whose English-language deficiency prevented them from fully participating in an English-only instructional program.

The chancellor did issue Special Circular No. 114 in June of 1975. It stated that the consent decree program would be made available to all language-minority children whose English-language deficiencies prevented them from fully participating in the educational process; subsequent memoranda specifying policies, establishing license areas, and requiring reports on implementation are practically devoid of any reference to other language-minority groups, however. No tests were ever developed by the Board to identify children of other language-minority groups who were in need of bilingual instruction.

Aspira reported that representatives of other language-minority groups approached the agency to gain support in pressuring the Board to enforce the provisions in the special circular.[66] This was also the subject of concern and discussion for the Board's City-Wide Advisory Commission on Bilingual Education. The Commission was representative of many language-minority groups. Jose A. Vazquez and Mario A. Anglada, formerly members of the Commission, reported meetings with Chancellor Anker with regard to this issue. The membership advocated the application of the consent decree to all language-minority groups.[67]

In addition, the minimum educational standards did not reflect a commitment to bilingual education by the Board. Even for the large numbers of children of Spanish-speaking origin to whom the policy did apply, the policy was clearly one of a compensatory nature and transitional in scope. Toward this end the policy states: "When a child is able to participate effectively in the learning process in English . . . the child is no longer required to receive this program."[68]

Criticism of the policy was leveled by Board officials. As late as 1976 Michael Costelloe, Special Assistant to Chancellor Anker in charge of consent decree matters, maintained that there were two requirements in the minimum educational standards that had resulted in implementation problems. One was the requirement that approximately an equal amount of time be given in Spanish in subject-area instruction (mathematics, science, history) to students in the consent decree program as was given in English in these subject areas to regular students. When coupled with the requirements that the child be integrated with English monolingual children during the school day and also receive instruction in English, this presented a problem, he maintained, because of the limited number of hours in the instructional day.[69] The second requirement incorporated in the policy with which he did not concur was that all substantive area instruction be given in Spanish. He maintained that traditionally, in bilingual programs, substantive area instruction is given in part in Spanish and in part in English.[70]

Another limitation of the policy on standards was related to the delivery of the program to children who attended schools with a limited number of eligible students. The policy perfunctorily states that ". . . a district *might* transfer these students to a school within the district or to a school within a contiguous district providing the program."[71] (Emphasis added.)

The lack of specificity of this policy and subsequent policy statements led Judge Frankel to admonish the Board, stating:

> As early as December 6, 1974, it was apparent to the Chancellor that transfer procedures would be necessary, and by the spring of 1975, the magnitude of the problem became evident. Nevertheless, not until February 1976 was a uniform transfer letter distributed city-wide explaining to parents how the system would operate and seeking their permission for their children to participate. It took roughly three months for the various revised drafts of the letter to be approved and disseminated. As a consequence, those students who had to be transferred in order to receive the program were denied the opportunity until fall of 1976.[72]

Parental Rights

The question of policies determining the rights of parents to decide whether their children would participate in the consent decree program became a major controversy. As early as January 2, 1975, an attorney representing a number of Hispanic parents from District 30 wrote a lengthy letter to Judge Marvin E. Frankel, stating that these parents were dissatisfied with the decree.

Essentially, they felt that their children should be taught in English—not in Spanish. They maintained that this would be a more effective approach to learning English as quickly as possible. Inasmuch as these opinions were expressed in an informal letter, they served no legal purpose. Judge Frankel suggested that formal action should be taken if it were deemed appropriate by the parties involved.[73] Three months later, on March 26, 1975, a motion on behalf of the objecting Hispanic parents was filed, asking that the decree be vacated, and "directing exclusion of" the children "from the judgment in this action," namely, the consent decree program.[74] The motion also questioned the procedural aspect of the class action, maintaining that the children had the right to receive individual notice prior to the execution of the decree.[75]

The Board did not support the position taken by these parents based on the arguments raised by them. The Board did, however, argue that the bilingual program prescribed by the consent decree was ill-suited for certain pupils who would benefit more from intensive instruction in English, without the training in Spanish usage and Spanish instruction in substantive courses required under the decree.[76]

Aspira, on the other hand, argued strongly against the motion by dissenting parents, arguing that the wording of the decree did not provide for such exceptions. Mario A. Anglada, then Executive Director of Aspira, maintained that the agency took a strong position against an accommodation of the policy—despite its long history of concerted efforts to support social action and policy which increased parental rights and involvement in decision making in public education. He pointed to the Parent-Student Guidance Program which for many years ran workshops on a city-wide basis with the goal of encouraging parents to participate and exercise their rights. He also pointed to the agency's support of decentralization and specific policies regarding parental rights to access to school records. Mr. Anglada felt that philosophically and practically the agency supported the concept of parental rights. In making the decision to oppose the motion, Aspira and the PRLDEF had to weigh other factors, he maintained. This included the fact that parents bringing the action were not Puerto Rican. There were also fears on the part of the agency that parents would be pressured and coerced by school personnel who were not in favor of the program in efforts to persuade them to sign their children out of the program.[77]

> We were functioning on certain assumptions. First, the Board was hesitant to implement the program. Four and a half years of struggle on our part left us at minimum cognizance of this and at most suspicious of any attempts to refrain from implementing it. Second, our parents are anxious to see their children succeed and learn English. They often have low self-concepts instigated and reinforced by this society. Regrettably, our parents have little knowledge about the benefits of bilingual education. Traditionally, our parents respect school officials. Too often, they respect them blindly. These are the same officials against which we were compelled to bring the suit to ensure equal educational opportunities for these very children. Thirdly, the economic crisis had produced an atmosphere of fear in the schools on the part of personnel. The fear of losing their positions to bilingual personnel might drive school personnel to encourage parents to take their children out of the program. Finally, we never sought to speak for any group other than Puerto Ricans because we knew that other ethnic and language groups view their futures and their rights within a different sociohistorical perspective than the Puerto Rican. The parents bringing the action to vacate were not Puerto Rican.[78]

Beyond the assumptions alluded to by Mario A. Anglada, there were factors which had been brought to the attention of Aspira and PRLDEF which weighed heavily on the decision. Aspira had already received complaints about actions of administrators and teachers reportedly encouraging parents and high school students to refuse to place their children or to participate in consent decree program classes.[79]

The PRLDEF also argued that parents "do not have the option to exempt their children from curricula which is [*sic*] declared a minimum educational requirement."[80] It argued that parents cannot choose to exempt their children from science or math instruction deemed to be a part of a minimum educational program. State education law gives the chancellor the power to establish and the authority to implement minimum educational standards for children in New York City schools. The PRLDEF also argued that the consent decree program was the only program deemed by the court to be "the means of securing federal rights"[81] and warned that

> to adopt a practice whereby parents of children could select or opt out of a remedy for the violations of law to which students were victims would substantially impede the implementation of any comprehensive order securing equal educational opportunity.[82]

The PRLDEF suggested that if such an "opting-out"[83] policy were permitted, it could conceivably serve as a precedent in other civil rights litigation such as school desegregation plans. In such a case, parents would have the option not to participate in a court-ordered integration plan. The potential detrimental impact of such a precedent was feared.

In denying the plaintiffs' arguments, Judge Frankel reproached Aspira for "misconceiving the court's powers and purposes in this case . . ." and having "allowed their zeal for bilingual education to sweep them momentarily past deeper concerns for freedom."[84] In his decision, Judge Frankel also stated that:

> The consent decree awarded to plaintiffs class of Hispanic parents and children certain "rights" they sought to a program of bilingual education. It imposed no *duties* upon the members of the class to "enjoy" those rights. It is a contradiction in terms—and, more importantly, a subversion of basic principle—to make such an award of rights to the machinery for compulsory participation. . . . Nobody conceived the "opportunity" as either an order or an "educational . . . requirement."[85]

The judge did, however, go on to support the program embodied in the consent decree, by stating:

> It has been formulated, arduously and in good faith, as the apparent best that can be done. It is thought, therefore, to be, probably, preferable to the alternative the movants may seek. But we have not the certainty or the arrogance to decree (had we the power) that it be the sole and compulsory course.[56]

Inasmuch as Aspira's major concern related to the procedures the Board would employ in opting-out pupils, the Board submitted to the court, after consultation with the PRLDEF, forms for notices to school administrators and letters to Hispanic parents which were intended to inform concerned people of the program and to permit opting out while refraining from encouraging it.[57]

Appended to the court's order was a draft of the special Board circular which was to be sent to all school administrators. It defined Board policy and procedures to be followed in informing parents that their children had been determined to be eligible for the program on the basis of their performance on the Language Assessment Battery. It also gave the procedure to be followed if a parent preferred not to have his/her eligible child participate in the program. Specifically, the circular stated that parents of pupils identified to be eligible

> are to be notified of their child's entitlement and of the nature of the program to be provided. The attached letter has been prepared for that purpose and is to be reproduced locally for distribution. Every effort is to be made to inform parents of the educational value of the program and no attempt is to be made to invite parents to withdraw their children from the program.[58]

The circular went on to stipulate the steps that should be taken when parents preferred not to have their eligible children participate in the program provided. This included:

> "1. The parent is to be provided with printed material in English and in Spanish which explains the nature, purposes, educational value of the program, and the skills required of personnel. Such materials will be sent to you as soon as it is completed.
>
> "2. The principal is to invite the parent to meet with him or his representative along with the school or district coordinator of bilingual education to discuss and explain further the nature, purposes, educational value of the program, and the skills required of personnel. In discussions with the parent, opportunity is to be provided (a) to observe a class providing instruction in the program; (b) to meet with other parents whose children have participated in or are participating in the program; and (c) to enroll the child in the program on a trial basis.
>
> "3. A parent who has had such a meeting may withdraw his/her child from the Consent Decree Program. Such a pupil should be provided a program which includes intensive instruction in English.
>
> "4. At any time, thereafter, the parent may consider the decision not to have the child in the Consent Decree Program. A subsequent request for placement of the child in the Consent Decree Program is to be honored as long as the child remains eligible for the program based on the most recent language assessment procedure.
>
> "5. A record of those children who have withdrawn from the program shall be maintained by the principal for reporting purposes and forwarded each month to the Community Superintendent. The record shall include the name of the student, grade level, record of meetings with the parent, and date of withdrawal from the program. The Community Superintendent shall provide the Office of Bilingual Education monthly summary reports setting forth the numbers of children by grade and school, that have withdrawn from the program."[59]

This is perhaps the most comprehensive policy establishing and assuring procedural aspects of the rights of parents as important elements of the instructional program in New York City public schools. In this case, policy change was once again the product of litigation, discussion, and compromise. Judge Frankel's decision was applauded by many, including the Council of Supervisors and Administrators (CSA), which felt that the parents who filed the motion to vacate the judgment had

> won a victory for the parents of the City and perhaps the nation, in that they are freed from the alleged requirement that their children submit to a bilingual education program that would have the effect of foisting a dual language system on this City.[60]

This statement also reflected and served to substantiate Aspira's concerns over the CSA's posture toward the decree. But the policy had implications for other groups as the PRLDEF had predicted—particularly those Community School Boards which did not fully support the consent decree program.[61] CSA and some Community School Boards sought to extend the policy issue to the question of the powers of local Community School Boards. One such district was District 30 in Queens. The Community School Board had consistently failed to comply with Central Board program guidelines and deadlines. In fact, Judge Frankel singled out District 30 in his October 1976 ruling, finding it the most persistent, thorough violator of the consent decree.[62] The district's failure to implement the bilingual program was characterized by Chancellor Anker as being 100 percent noncompliance with the decree. However, not until after contempt proceedings were initiated by Aspira did Chancellor Anker supersede the powers of the district officials and appoint Dr. Charles Schonhaut as trustee to implement the decree in February of 1976.[63] The district's response was to sue in state court. It sought to keep the consent decree program from being implemented in District 30. The suit was transferred to federal court and was dismissed by Judge Frankel.

As late as January 1977, the PRLDEF submitted an affidavit and obtained an order to show cause why District 30 should not be held in civil contempt of the consent decree and subsequent orders. The affidavit, sworn

to by PRLDEF attorney Richard J. Hiller, claimed that officials in District 30 failed to identify promptly those students entitled to take part in the program for bilingual education. He pointed out that two weeks after the deadline in September 1976, at least 1,000 and possibly as many as 2,000 Hispanic students had not been tested to determine whether they were eligible for the program.

Aspira also asserted that the consent decree was not being enforced in all the schools having enough students entitled to receive bilingual education. In some cases, few elements of the program were being taught. Aspira further argued that the design of District 30's "magnet-feeder" school system discouraged participation in the program. According to the most recent data submitted by the district, almost all eligible children participated in the consent decree program when it was offered in the school in which they are enrolled. However, very few eligible children participated when they were bussed from their local "feeder" school to another "magnet" school in order to take part in the program. Aspira claimed that District 30, despite its knowledge of parental reluctance to bus children, adopted a magnet-feeder system to deliver the program and that it unduly and unnecessarily conditioned children's federal rights on their parents' agreeing to bus them to magnet schools."[94] Such an accommodation of existing policy served to negate the spirit and intent of that policy.

Judge Frankel had already warned District 30 at an April 1, 1976 hearing that the district had failed to conform to procedures and forms which were more appropriate for opting-out students. He found the district's forms unacceptable and further asserted that they

> would not be in compliance either with this court's decree, the consent decree, or the order of July 11, 1975. It is a form letter designed to discourage and treat entirely negatively the rights or the assertion of rights provided for in the court's consent decree. . . . If there are questions of compliance with this Court's decree, the judges of this court cannot be made to run around the city and bicker with every community board and its members about what they might prefer or not prefer. . . .
>
> . . . whatever their excellent motives might be . . . we have a big, cumbersome lawsuit here. . . . It is not for every local official or subordinate agency to decide for itself what is adequate compliance with the Court's decree. Prima facie, I must and I will look at the named parties in this case for compliance with our decree.[95]

In this and other instances, the court clarified to Community School Boards and the Board that districts could neither choose to implement the program nor determine independent policies as to the program's basic scope and procedural agreements stemming from negotiation or litigation by parties of the suit. Furthermore, the judge admonished the Board in its October 1976 contempt decision regarding the Board's responsibility in bringing local school boards into full compliance. Judge Frankel stated:

> Defendants have fallen far short of the requisite diligence. They have neglected to marshal their own resources, assert their high authority, and demand the results needed from subordinate persons and agencies in order to effectuate the court of action required by the consent decree.[96]

Expressing a concern with the performance of local school districts in failing to provide the program to qualified children, the judge further ordered that no students found to be entitled to bilingual education "should be permanently excluded from receiving bilingual education because he or she may in some sense have opted out at some (prior) time."[97] He thereby responded to Aspira's criticism with respect to a number of districts in which Aspira claimed the opting-out policy was not only being ignored procedurally but was resulting in a form of exclusion.

Judge Frankel went on to comment at length in the 33-page opinion on the failure of the chancellor to supervise and control many of the local school districts in the implementation of their responsibilities under the bilingual education court decree. He stated that:

> The failure of supervision and control extended to extravagantly long and benign tolerance of outright defiance as well as foot-dragging and evasion in the districts. The uneven rates of compliance as among the several districts could have been, should have been, and actually were vivid evidence that a number of districts were guilty of obstruction at worst and neglect at best.[98]

With regard to decentralization and local school boards, he went on to conclude that

> the decentralization of the schools cannot excuse noncompliance; instead, it highlights the need for vigorous leadership and sustained communications between the Board of Education and community school administrators if the program is to be successfully implemented. These proceedings reveal that, to a large degree, the Board has not come to grips effectively with the necessity of overseeing and controlling the decentralized districts.[99]

Personnel

Paragraph 7 of the consent decree related to the personnel component of the program in two general regards: personnel qualifications and personnel recruitment and training. As regards qualifications, the decree specified that personnel functioning in the program shall: (1) be fluent in the Spanish language and able to comprehend and express themselves fully in written Spanish; (2) possess the requisite knowledge and skills of the substantive courses to be taught; (3) possess the requisite pedagogical skills; and (4) be capable of reading, writing, and speaking English.[100]

In order to provide such staff for the program, the Board was required to: (1) develop and implement programs to retrain personnel who possess content and pedagogical skills to become fluent in a second language, thus enabling them to participate in the program; (2) develop and implement an intensive and ongoing affirmative action program designed to recruit bilingual personnel in New York City and elsewhere, within the

New York City school system and without, and to place such bilingual personnel appropriately in the school system; (3) create additional bilingual licenses needed to implement the program; (4) develop and implement programs designed to train personnel who do not possess bilingual licenses, in preparing for and taking such licensing examinations; (5) schedule and grade all bilingual licensing examinations expeditiously so as to increase the opportunity for persons to obtain bilingual licenses, and to schedule such examinations as frequently as necessary to recruit and maintain sufficient staff. Finally, the Board of Education's best efforts were required to retrain or place personnel (1) who possess bilingual licenses, but who are presently teaching under other licenses, and (2) who were fluent in English and Spanish and who were then teaching in bilingual programs.[101]

Finally, Paragraph 10 of the consent decree required that the Board report to the court and Aspira in the event that personnel shortages should prevent the full implementation of the program. However, inasmuch as the consent decree did not stipulate exactly how many bilingual teachers would be needed to implement the program, what specific credentials and other qualifications would be required of bilingual teachers, or what specific policies would be in effect in terms of existing personnel (including questions regarding tenure, displacement, and placement), concerns and fears were high about personnel policies. The economic dilemma in which the school system found itself aggravated these concerns. As discussed in Chapter II, personnel policies were the subject of debate even prior to the signing of the consent decree. Many of these policy issues remained unresolved until the October 1976 contempt ruling, which stated that this was "one of the clear aspects in which defendants have breached their duty of diligent performance"[102] in implementing the consent decree program.

These stipulations had a profound impact on personnel policies in New York City public schools in the years to follow the consent decree. This was one area, however, in which policies were particularly resistant to change, as was documented during contempt proceedings. Two other interest groups played an important role in this resistance: the Community School Districts and labor unions.

Attitudes of Interest Groups and Personnel Policies

Many local school boards, district superintendents, and school principals did not implement directives regarding displacement of personnel. The causes for such defiance were varied. Some evidence indicated that local school boards resented the Central Board's infringement of powers granted them under the decentralization law. Superintendents, in many cases, may have been torn between the resistance of their boards, administrative difficulties in the face of personnel cuts across the board, and morale problems when faced with personnel decisions. Principals were faced with the same problems; however, they were closer to staff morale situations and additionally had to contend with parental objections over shortened school days. When programs were terminated because of budgetary cuts, parents often perceived the consent decree program as the cause of such terminations.[103] In most cases this was not the case, but when programs were terminated and others newly implemented, such misconceptions could be expected.[104]

An analysis of personnel policies in the city of New York would be incomplete without consideration of the position taken by two key interest groups, the United Federation of Teachers and the Council of Supervisors and Administrators. At the signing of the consent decree, Chancellor Anker acknowledged that the agreement had been reached "in consultation with" the United Federation of Teachers (UFT). Though there was no immediate public comment from the union,[105] public reaction was soon to come.

At its October 21, 1974 meeting, the executive board of the UFT adopted a position on bilingual education.[106] It subsequently issued a statement regarding personnel policy recommendations. These included:

> "1. All bilingual personnel should first pass a regular examination in the subject matter. Bilingualism should not be viewed as a substitute for knowledge in English, mathematics, social studies or any other subject. To provide for less is to guarantee inferior education.
>
> "2. Once subject matter competency is insured, bilingual candidates should take a separate exam in the relevant language to obtain an ancillary certificate in the second language. This exam should be open to all regular teachers who wish to obtain an ancillary bilingual certificate.
>
> "3. All teachers who have already passed examinations in subject proficiency should be offered in-service courses in a second language so that they can obtain bilingual skills."[107]

The statement went on to make the following program recommendations:

> "1. To guarantee English mastery by all pupils, a licensed 'Teacher of English Language' should be assigned to every bilingual program.
>
> "2. A licensed 'Bilingual Teacher in School and Community Relations' should be assigned to each bilingual program in order to insure the necessary linkage between the work of the school and the environment of the home and the community.
>
> "3. Opportunities should be provided for classroom professionals to work with small groups to strengthen language learning. These paraprofessionals need not necessarily be bilingual.
>
> "4. Personnel appointed to bilingual programs should be assigned to districts by the central Board of Education in accordance with objective uniform criteria.
>
> "5. Objective criteria should be used for the placement

of students in bilingual classes and for the establishment of such classes.

"6. Parental consent should be obtained before students are placed in bilingual classes.

"7. Ongoing evaluation programs should be established to evaluate both the program and the child's progress."[108]

In summary, the union's position was that bilingual education should provide for "intensive instruction in English which will enable the child to function as soon as possible in the dominant language of the school system and the country."[109]

On November 3, 1974, in a standing weekly advertisement in the Sunday edition of the *New York Times*, Albert Shanker reduced opponents' arguments for supporting bilingual education to "the specious argument that it is easier to learn in two languages."[110] In terms of the instructional needs of the children in question, he stated: ". . . what these children need is intensive instruction in English so that they may, as soon as possible, function with other children in regular school programs."[111]

The advertisement went on to identify eight grievances against how bilingual programs were being implemented by comparing them to "ineptness" of war on poverty community corporations. It alleged the following:

- –Many schools are employing personnel. In order to fund these new programs they are dismantling the TESL (Teaching English as a Second Language) program. . . .
- –Very few bilingual teachers are available. In the face of this shortage, schools, in their haste to institute "bilingual" programs, are hiring teachers who are monolingual–who speak the language of the child but speak no English at all or very little! The result is that many children in "bilingual" programs learn no English whatsoever! . . .
- –Some children are compelled to enter such programs against their wishes and those of their parents. . . .
- –Non-Hispanic teachers who speak both English and Spanish are dismissed from their jobs–to be replaced by teachers who are not as fluent in either language–on the assumption that if the teacher is not a member of the ethnic group, he or she cannot be as competent. . . .
- –Since funds are limited, the adoption of bilingual programs frequently touches off a polarized conflict among ethnic groups in the school community. In P.S. 61 Bronx, for example, the adoption of a bilingual program for Spanish-speaking children was accomplished by the elimination of a special reading program which benefited the school's black children.[112]

Hernan LaFontaine, Executive Director of the Office of Bilingual Education, responded to Shanker's charges, accusing him of creating an atmosphere of "fear, resistance and hostility."[113] Congressman Herman Badillo, outraged by the column, responded by calling for public congressional hearings on the allegations. He asserted that "these are serious charges that cannot be allowed to continue unquestioned."[114] Congressman Badillo emphasized that bilingual education and the consent decree program were in "infancy" and that contributions were "just beginning to be felt. . . . Mr. Shanker wishes to destroy these gains by making unfounded and inflammatory allegations."[115] Others called on Mr. Shanker to produce such evidence.[116] Hearings were never called.

The Council of Supervisors and Administrators (CSA) did not particularly support the consent decree. The Council's position on what it perceived as "ethnically divisive" actions and directives of the Board was not limited to the consent decree. As early as 1968, the CSA took a strong position against plaintiffs in *Boston M. Chance and Luis C. Mercado et al.* v. *The Board of Examiners and The Board of Education of the City of New York et al.* (70 Civ. 4141),[117] which challenged the testing requirements for supervisory personnel, on the basis that the examinations were discriminatory. The suit resulted in the abolishment of those examinations. It is interesting to note that Harvey Scribner, then Chancellor of the city's schools, stated:

> My position with regard to the Chance and Mercado case is that I prefer not to defend myself against the action. To do so would require that I both violate my own professional beliefs and defend a system of personnel selection and promotion which I no longer believe to be workable.[118]

Charges of "reverse discrimination" on the part of Hispanics were leveled by CSA long before the consent decree was signed. In June of 1974, Peter S. O'Brien, president of the 4,000-member organization, charged at the CSA's eleventh annual convention that there was a growing problem with new principals who lacked basic skills in writing, grammar, and English usage; this problem, he alleged, was eroding morale in some schools. O'Brien cited five cases. Of these, three were principals whose speech was reportedly heavily Spanish-accented. Chancellor Anker responded to these charges, stating that no one had brought any such allegations to his attention. He also criticized the CSA for fighting a rating system intended to improve supervisors' performance.[119]

The Council later opposed state and federal ethnic surveys of teaching and supervisory personnel.[120] The federal survey was related to an HEW investigation of the public school system. Charges of racism on the part of decentralized school districts and their administrators were also made at the Council's annual convention in 1976, this time by Bernard Gifford, then Deputy Chancellor of the school system. He charged that racist practices in some of the city's districts had created all-white staffs or, at the other extreme, staffs with heavy minority-group representation. He maintained that some 180 schools–about a fifth of the total number of schools in the system, had no minority-group teacher. He made these remarks in response to speakers and members of the audience who had criticized allegedly racist personnel practices in some minority areas.[121]

Howard L. Hurwitz, an officer of the CSA and Principal of Long Island City High School, authored an early article in opposition to the consent decree program. He maintained that ESL instruction had been effective in

teaching English to other language-minority groups and criticized the ethnic character of bilingual instruction.[122]

The Impact of the City's Economic Crisis

In 1974 there was no evidence to support apprehension on the part of Hispanic teachers, Aspira, and the community as to the potential effects of the city's economic crisis on minority teachers. Fears, however, were realized in a report by the city's Human Rights Commission, which reviewed the impact of the economic crisis on the municipal work force between 1974 and 1976. The study found that Hispanic workers suffered the greatest. More than 50 percent of Hispanic workers were separated from their jobs in municipal services including education.[123]

Bilingual Personnel Policies 1974-75

At the signing of the consent decree there existed licenses for many categories of bilingual instruction. The examinations required for such licensing included both written and interview components in English and Spanish and short answer and essay questions. The more recent development in such testing procedures had been to allow the applicant to take the latter part of the examination in her or his own native language. Another development had been the introduction of the examination for license for bilingual guidance counselors (Spanish-English) in elementary schools.[124]

These examinations were lengthy and complex. In order to obtain a license as a bilingual teacher of common branch subjects, for instance, an individual had to pass

Table 5

BILINGUAL LICENSE AREA AND NTE APPOINTMENTS: 1964-1975

Bilingual License Areas	App't Made in Last 10 Years (as of May 9, 1974)	App't Fall 1974	App't Spring 1975	Fall 1975	Total
Bilingual CB–Chinese	1		4		5
Bilingual ECC–Spanish	24	1	1	21	47
Bilingual ECC–French				2	2
Bilingual CB–Spanish	416	21	179	131	747
Bilingual CB–French	5	1		2	8
Bilingual CB–Italian	10	1	2	6	19
Bilingual CB–Greek		2	5	2	9
Bilingual School & Community Relations (Italian)		1	1		2
Bilingual School & Community Relations (Spanish)	275	10	3		288
Bilingual School & Community Relations (French)	2	4	2		8
Bilingual School & Community Relations (Chinese)	6				6
Bilingual Guidance Counselor DES (Spanish)	13	3	3	1	20
Bilingual Guidance Counselor DES (Greek)				1	1
English as a Second Language	121	5		57	183
Attendance Teacher (Spanish speaking)	6	1			7
Bilingual General Science–JHS (Spanish)	2			6	8
Bilingual Math–JHS (Spanish)		1	1	8	10
Bilingual Social Studies–JHS (Spanish)				6	6
Bilingual Chemistry and General Science–HS				1	1
Bilingual Social Studies–HS				2	2
Bilingual Biology, General Science–HS				2	2
Bilingual Math–HS				6	6
English as a Second Language–HS	120	7		53	180
Bilingual Guidance Counselor–HS (Spanish)	22	14		7	43
Bilingual Guidance Counselor–HS (Chinese)				1	1
Totals	1,023	72	201	315	1,611

NTE Appointments*	App't Fall '71 Fall '73	App't Fall '74	App't Fall '75	Total
Bilingual ECC (Spanish)		6	1	7
Bilingual CB (Spanish)	71	167	45	283
Bilingual CB (Italian)	3	1		4
Bilingual JHS Math (Spanish)		3		3
Bilingual JHS Social Studies		1		1
Bilingual CB (French)			1	1
Totals	74	178	47	299

Source: Board of Education, Division of Personnel, Bureau of Research and Statistics.

*Appointments based on performance on the National Teacher Examination.

satisfactorily: (1) a written test (short answer and/or essay type questions), (2) an interview in English, (3) an interview in Spanish, (4) a written Spanish examination, (5) a written English examination, (6) an approval of record, and (7) a physical and medical test.[125]

As of May 9, 1974, there were 1,097 pedagogical personnel holding bilingual licenses in New York City schools. These appointments had been made in the ten years prior to this and fell within fourteen bilingual license areas. This total included all languages in which language examinations were given: Chinese, French, Italian and Greek. Table 5 gives a breakdown of the number of individuals in each license area. Note that table 5 also shows that in the fall of 1975 appointments of licensed bilingual personnel were approximately five times what they had been in the fall of 1974.

Puerto Rican community representatives had leveled charges that the length and complexity of the examinations discouraged potential applicants. When coupled with deadlines, bureaucratic procedures, and the infrequency of their offerings, they maintained that these factors became insurmountable and served to exclude Hispanics who might otherwise take the examinations.[126] Table 6 shows that Spanish-surnamed teachers constituted only 3.1 percent of the teaching staff in New York's public schools between 1975-76.

To obtain the necessary bilingual personnel to implement the consent decree program, Frank Arricale II, Executive Director of the Division of Personnel, instituted a number of programs in the fall of 1974. This included the establishment of a bilingual skills bank. This bank was used to identify and list names and skills of persons with the prerequisite skills to teach in the consent decree program. By 1976 there were 5,000 names of persons listed who received information about pending examinations.[127] Recruitment efforts included advertisement in the media. During April and May of 1975 recruitment efforts were extended to Puerto Rico, where a team of the division's staff recruited and tested qualified applicants.[128] The results of these examinations are summarized in table 7, which shows that 94 teachers completed the examinations and 19 teachers reported to work in New York City schools.

Table 6

INFORMATION CENTER ON EDUCATION ETHNIC CENSUS 1974-75
PUBLIC SCHOOL STAFF BY SCHOOL AND DISTRICT

Region Summary—New York City	Total	American Indian		Black		Oriental		Spanish-surnamed American		Other	
		No.	%	No.	%	No.	%	No.	%	No.	%
Principals	981	2	.2	176	17.9	0		39	4.0	764	77.9
Assistant Principals	2,705	1	*	272	10.1	8	.3	48	1.8	2,376	87.8
Teachers	55,415	11	*	5,299	9.6	299	.5	1,727	3.1	48,099	88.8
Other Instructional Staff	4,120	2	*	434	10.5	21	.5	227	5.5	3,436	53.4
Full Time Central Office Staff	989	0		196	19.8	0		100	10.1	693	70.1
Full Time Professional Staff	64,210	16	*	6,377	9.9	328	.5	2,121	3.3	55,358	66.2
Part Time Professional School Staff	2,396	1	*	324	13.5	8	.3	72	3.8	1,991	83.1
Part Time Central Office Staff	1	0		0		0		0		1	100.0
Part Time Professional Staff	2,397	1	*	324	13.5	8	.3	72	3.0	1,992	83.1
Number of Schools: 990											

Source: Board of Education.
*Less than 1%

Table 7

CANDIDATES EXAMINED FOR LICENSES
IN PUERTO RICO

Field	Filed	Reported for Written	Reported for Interview	Reported for Performance
Biology*	27	16	16	16
Chemistry†	7	3	3	3
Mathematics	30	14	13	–
Social Studies‡	118	68	62	–
Total	182	101	94	19

Source: Board of Education of the City of New York, Division of Personnel, Report on Consent Decree Compliance, May 1976, Sec. III.
*1 candidate changed to Chemistry.
†1 candidate changed to Social Studies.
2 candidates not on list but took examination conditionally.
‡1 requested refund of fee included in 118 total.

In light of the fact that the decree required broad-based subject area instruction in Spanish, new licenses were needed and requests were made to the Board of Examiners for new license examinations.[129] Table 8 includes a list of examinations given since the signing of the consent decree. A comparison of table 5 (page 83) and table 8 will reflect the increase in license areas.

Another effort to recruit the bilingual teachers necessary to implement the program was the institution of a new personnel policy—the ancillary certificate. This policy received strong support from the union.[130] The ancillary certificate examination was a means of determining whether or not a regularly licensed teacher had sufficient fluency in Spanish to be able to function effectively in the consent decree program. The first step

Table 8

EXAMINATIONS GIVEN SINCE THE ASPIRA CONSENT DECREE

Elementary	Date of List	No. of Names on List
Bilingual Teacher School & Community Relations (Spanish)	7/17/74*	24
Bilingual Teacher School & Community Relations (Spanish)	9/1/75	171
Bilingual Teacher School & Community Relations (Chinese)	2/1/75	29
Bilingual ECC (Spanish)	8/29/74	2
Bilingual ECC (Spanish)	1/22/75	247
Bilingual ECC (French)	5/30/75	20
Bilingual CB (Italian)	5/30/75	48
Bilingual CB (French)	5/30/75	72
Bilingual CB (Greek)	5/30/75	11
Bilingual CB (Chinese)	1/22/75	22
Bilingual CB (Spanish)	8/29/74	3
Bilingual CB (Spanish)	2/10/75	261
Bilingual CB (Spanish)	9/1/75	628
Bilingual Guidance Counselor (Spanish)	10/22/75	37
Bilingual Guidance Counselor (Chinese)	10/22/75	6
Bilingual Guidance Counselor (Italian)	10/22/75	2
Bilingual Guidance Counselor (Greek)	10/22/75	1
Bilingual Guidance Counselor (French)	10/22/75	1
English as a Second Language	8/14/74*	1
English as a Second Language	9/1/75	325
Junior High School		
Bilingual Teacher General Science (Spanish)	3/6/74*	3
Bilingual Teacher General Science (Spanish)	9/1/74	5
Bilingual Teacher General Science (Spanish)	2/1/75	3
Bilingual Teacher General Science (Spanish)	2/20/75	3
Bilingual Teacher General Science (Spanish)	9/1/75	10
Bilingual Teacher Math (Spanish)	2/1/74*	7
Bilingual Teacher Math (Spanish)	9/1/74	5
Bilingual Teacher Math (Spanish)	2/1/75	10
Bilingual Teacher Math (Spanish)	2/26/75	9
Bilingual Teacher Math (Spanish)	9/1/75	17
Bilingual Teacher Social Studies (Spanish)	2/19/75	33
Bilingual Teacher Social Studies (Spanish	2/19/75	46
High School		
Bilingual Guidance Counselor (Spanish)	10/22/75	53
Bilingual Guidance Counselor (French)	10/22/75	16
Bilingual Guidance Counselor (Italian)	10/22/75	4
Bilingual Guidance Counselor (Greek)	10/22/75	3
Bilingual Guidance Counselor (Chinese)	10/22/75	4
Bilingual Teacher of Math (Spanish)	2/1/74	14
Bilingual Teacher of Math (Spanish)	2/19/75	15
Bilingual Teacher of Math (Spanish)	11/7/75	21
Bilingual Teacher Social Studies (Spanish)	3/3/75	50
Bilingual Teacher of Chemistry & General Science (Spanish)	7/19/74	1
Bilingual Teacher of Biology & General Science (Spanish)	8/26/74	2
Bilingual Teacher of Chemistry & General Science (Spanish)	9/1/74	3
Bilingual Teacher of Chemistry & General Science (Spanish)	2/20/75	1
Bilingual Teacher of Earth Science & General Science	12/4/74	1
English as a Second Language	8/22/74	19
English as a Second Language	1/22/75	456

Source: Board of Education of the City of New York, Division of Personnel, May 1976.

*The Division of Personnel did not note that these lists were dated prior to the signing of the *Aspira* Consent Decree.

in preparing for the first ancillary license examination was the execution of a survey in which teachers employed by the Board expressed interest in the examination and professing proficiency in Spanish.[131]

The first ancillary examinations were given in June of 1975.[132] An unusual and unprecedented procedure was implemented regarding bilingual examinations to increase the number of applicants passing the examinations. Persons taking the exam were offered orientation sessions to assist them in preparing for and passing the test.[133] Table 9 summarizes the number of candidates by license area filing to be examined for ancillary certificates as of June 17, 1975.

By all estimates, the Board was successful with regard to recruitment. As a result of these efforts, enough teachers were available to implement the program in the fall of 1975. As table 10 shows, there were 1,527 licensed bilingual candidates still available for appointment to schools needing personnel on October 27, 1975.

Budget cuts throughout the school system resulted in termination notices to thousands of teachers during the spring of 1975.[134] Amidst the economic crisis, the UFT went on strike in September of 1975. The potential impact of the consent decree was an issue.[135] Aspira and the PRLDEF became particularly alarmed when numerous complaints were received by bilingual personnel who claimed that their schools would be left the necessary personnel to implement the consent decree program, which was scheduled for full implementation in the fall of 1975. An internal Aspira memorandum stated:

> During the summer months, affidavits from teachers and bilingual coordinators that have been excessed have been set up. The lawyers remain with the contention that in order to comply with the consent decree, the defendants must use their best efforts to retain bilingual personnel. As of this date, the lawyers are meeting with defendants in order to reach an agreement concerning bilingual personnel.[136]

Table 9

NUMBER OF CANDIDATES FILING TO BE EXAMINED FOR ANCILLARY CERTIFICATES AS OF JUNE 17, 1975

Test Code No.	Description	No.
554 C	Chemistry	5
658 C	Physics, General Science	2
659 C	Earth Science	2
676 C	Biology & General Science	16
705 C	Mathematics DHS	30
707 C	Social Studies DHS	42
708 C	Social Studies JHS	64
724 C	General Science	12
788 C	Matnematics JHS	17
797 C	Common Branches	582
798 C	Early Childhood	137
Total		905

Source: *Aspira v. Board of Education*, 72 Civ. 4002 New York, Division of Personnel (S.D.N.Y. May 1976). (Unreported Report.)

On the basis of these affidavits, the PRLDEF filed a show cause order which sought to prevent the discharge, layoff, or "excessing" of instructional personnel needed for the program. Judge Frankel refused to decide the issue on the grounds that the Central Board of Education had not submitted enough information on which to base a judgment. Subsequently, on August 15 and again on September 9, in the midst of a teachers' strike, the judge ordered the Board to provide information relevant to personnel (and testing as discussed earlier in this report). However, the judge concluded that on the basis of evidence, there were unqualified teachers teaching in the consent decree program and there were bilingual teachers who were excessed from the system.[137]

On August 26, 1976, the Board submitted the first set of reports. A summary of district reports prepared by the PRLDEF is found in appendix B.

However, it was not until October of 1975, after schools and school districts had submitted program designs which included information as to staffing patterns (as required by the August 15 court order), that concerns regarding personnel were broadly confirmed. On the basis of the August 26 reports, the PRLDEF repeatedly warned the Board and the court that there were insufficient bilingual and ESL teachers on staff to deliver the program to all eligible students. The program designs revealed that the defendants were using personnel in the program who lacked the credentials or qualifications established in paragraph 7 of the consent decree. Appendix B presents a summary of data of these program reports by district and by elementary and junior high schools. As these tables indicate, these reports also failed to offer a complete picture of the implementation of the consent decree program.

Arguing that in the elementary schools a ratio of thirty children to one teacher seemed a plausible rule of thumb to apply to the data culled from these reports, the PRLDEF continued to argue that there were not

Table 10

CANDIDATES ASSIGNED IN BILINGUAL LICENSES
OCTOBER-DECEMBER 1975

Subject Area	No. of Candidates 10-27-75	Assigned from List as of 10-27-75	Balance of Unassigned 10-27-75	Assigned as of 11-17-75	Balance of Unassigned 11-17-75	Total Assigned in Each Subject Sept.-Nov.	Assigned as of 12-22-75	Total Assigned in Each Subject 9-12-75	Balance Unassigned 12-22-75
Bilingual ECC (Spanish)	150	40	110	0	110	40	22	62	48
Bilingual ECC (French)							4	4	
Bilingual ECC (Italian)							1	1	
Bilingual CB (Spanish)	475	261	214	23	191	284	87	371	104
Bilingual CB (Italian)							33	33	
Bilingual CB (Greek)							9	9	
Bilingual CB (Chinese)							1	1	
Bilingual CB (French)							3	3	
ESL (DES)	250	46	204	18	186	64	2	66	120
School & Community Relations (Italian)							5	5	
Library (DES)							3	3	
Guidance Counselor (Spanish)							1	1	
Guidance Counselor (Greek)							1	1	
JHS Math (Spanish)	25	10	15	6	9	16	5	21	4
JHS Social Studies (Spanish)	67	9	58	13	45	22	1	23	44
JHS General Science (Spanish)	15	2	13	0	13	2	7	4	6
JHS Italian							7	7	
JHS Spanish							98	98	
JHS Home Economics							1	1	
JHS Physical Education							4	4	
JHS Guidance Counselor							2	2	
DHS Chemistry (Spanish)	3	4	2	0	2	1	1	2	1
DHS Math (Spanish)	24	9	15	0	15	19	3	12	12
DHS Social Studies (Spanish)	25	18	7	0	7	18	0	18	7
DHS Earth Science (Spanish)	1	1	0	0	0	1	0	1	0
DHS General Science & Biology (Spanish)		1					0	1	
DHS Guidance Counselor (Spanish)		5		8		13	0	13	
DHS Guidance Counselor (Chinese)				1		1		1	
ESL (DHS)	492	30	462	10	452	40	53	93	399
Totals	1,527	433	1,094	79	1,015	496	346	842	645

Source: Board of Education of the City of New York, Progress Report on the Implementation of the Consent Decree Program 26 January 1976, Attachment H, Report on Recruiting Activities of the Division of Personnel Covering a Period From Nov. 21-Dec. 31, 1975, New York, 31 December 1975.

enough teachers in the system to implement the program. They questioned the absence of reports regarding implementation of the program for high schools or special education students. Finally, they asserted that claims on the part of defendants of personnel shortages were contradicted by the Board's own compliance reports, which later showed that the Board maintained a list of over 1,000 candidates who had passed bilingual and/or ESL license examinations but who remained unassigned. Based on the PRLDEF's arguments and supporting documents, Judge Frankel issued an order to show cause why the Board should not be held in contempt, and subsequently ordered the hearings, which were presided over by Judge C. J. Hartenstine, Jr., as Special Master.

The seniority policy became particularly controversial in 1976 in the wake of thousands of additional layoffs resulting from the economic crisis. On January 4, 1976, State Supreme Court Judge Frank J. Pino, to the astonishment of many, overturned the Board's seniority policy, thereby throwing the issue into controversy.[138] The Board and the UFT fought over the issue prior to Governor Carey's decision. The Board supported the existing seniority policy, which gave a teacher or other employee seniority protection based on the time served in the position held at a given time. The UFT sought to change the law so that seniority protection would be based on a teacher's total service with the Board.

The Board maintained that the UFT proposal "would allow teachers to utilize nonteaching service as paraprofessionals to displace teachers with lesser experience."[139] The Board and the UFT finally did come to an agreement and the Stavisky-Goodman bill passed the state legislature. As a result, total experience was considered in computing seniority, but excessing of personnel was performed by tenure area.

This was a particularly positive outcome for bilingual programs in two respects. First, it was conceivable that Hispanic teachers who were already employed by the Board prior to the decree may have been reluctant to change over to a bilingual license. In the face of an economic crisis, this would have reduced their seniority standing to the equivalent of a newly appointed teacher and made them more vulnerable to being laid off.[140] Secondly, if bilingual licenses were made a separate tenure area, the potential of being excessed was reduced as this was directly related to the demand for bilingual instruction.[141]

Personnel Needs Remain Unmet

As early as February 18, 1975, Frank Arricale sent community superintendents, high school superintendents, and district personnel officers Personnel Letter No. 6 advising them to retain all qualified bilingual personnel and informing them of available bilingual personnel for any district requiring them.[142] Chancellor Anker sent a similar memorandum to these administrators July 7, 1975, reminding them of Personnel Memorandum No. 6 and their responsibilities under the consent decree.[143] On December 16, 1975, Frank Arricale sent Personnel Memorandum No. 79, reminding district officials once again of their responsibility to hire bilingual personnel.[144]

Other accommodations of existing policies made by the Central Board included: (1) temporary per diem certificates issued by the Division of Personnel to enable qualified individuals, not yet regularly appointed, to be hired to teach in the consent decree program;[145] (2) a recertification procedure for laid-off teachers who were fluent in Spanish and who had skills consistent with the needs of the consent decree program;[146] (3) a temporary certification procedure by means of informal examinations for laid-off teachers or teachers who had passed nonbilingual license examinations. These examinations were administered by Office of Bilingual Education personnel and were valid until the next formal ancillary certificate examination.[147]

On February 20, 1976, Frank Arricale issued Personnel Letter No. 100, which delineated for the first time the Board's policy regarding procedures to be followed in the removal of an unqualified teacher (one who did not possess a bilingual license or an ancillary certificate) from the consent decree program.[148]

Despite all of these policy reforms and policy accommodations designed to ensure meeting personnel needs, personnel shortages in the districts continued through October 1976. (See appendix C, table 21, in which Aspira summarized October 1976 school data reports submitted by the Board. The table shows the 126 schools by district in which Aspira questioned either the qualifications or the sufficiency of personnel reported working for the consent decree program.[149])

Policy Determination v. Policy Implementation

Many policy reforms and accommodations were made in the name of the consent decree program. However, these policies were often not adhered to and, more importantly, not forcefully carried out by the chancellor and the Board prior to February of 1976, when District 30 found its policy superseded. This was the first district against which action was taken.

It was not until December 23, 1975, the day after the order to show cause, that Chancellor Anker met with the Project Task Force and ordered the issuance of letters to districts advising them of the extent of noncompliance with the decree. At this same meeting, Michael Costelloe apprised the chancellor of the insufficiency of qualified personnel for the program.[150]

The hearings on contempt charges revealed that the Board recognized that, in order to provide sufficient qualified staff to implement the program fully, unqualified personnel would have to be displaced by qualified bilingual and ESL teachers available to implement the program. Aspira alleged that the chancellor had not moved to require that qualified personnel be hired and, if necessary, unqualified personnel be excessed.[151]

Full policy implementation in this case required in-

volvement by the judiciary to ensure that previously agreed-upon policies were carried out. Judge Frankel cited the gap between policy determination and implementation in his October 1976 decision, stating:

> There was a wide gap, however, between availability and placement. The community districts—responsible for hiring in the first instance, subject to the authority and decretal duties of the defendant Chancellor—failed in many cases to engage the bilingual teachers needed for effective implementation. In a number of schools, unqualified people were used in the program, contrary to the decree. The Chancellor and his subordinates knew of this situation throughout the school year 1975-76.
>
> Inadequacies in meeting the personnel requirements were among the main causes of another deficiency—the failure to accomplish the necessary testing and eligibility determinations.[152]

In summary, in evaluating the net impact of the consent decree on personnel policies, one must conclude that policy reform was substantial. By May of 1976 there were already improvements in the ratio of bilingual teachers to the number of children in the system entitled to the consent decree program.[153] The number of bilingual teachers was further increased by December of 1976.

Testing

Board of Education policies regarding the identification and classification of children with English-language deficiencies and/or in need of bilingual instruction were a key issue in litigation proceedings prior to the signing of the consent decree, as discussed in Chapter II of this study. These remained a point of contention during the two years which followed and in a number of instances required the intervention of the court to resolve issues of dispute. Nonetheless, this was an area in which major efforts were focused, and the results were major innovations and reform. Continued improvement in the diagnosis and classification of children to be served was made possible by the battery of examinations produced, which have subsequently been used in many school systems throughout the country.

Prior to August of 1974, the Board conducted two surveys in an effort to identify children of limited English-speaking ability. The findings of both were rejected by the court and the community. One survey was based on a rating scale which had been in use many years prior to the consent decree and which required a nearly arbitrary decision on the part of the teacher utilizing it.[154]

As a consequence of the inadequacy of the first attempts, the two parties to the suit agreed that only a standardized test could be used reliably to identify children. A test was already being designed for use "at all grade levels by October 1, 1974."[155] The test, "Scale for Rating Pupils' Ability to Speak English," developed by Howard S. Tilis and William Weichum,[156] was later renamed "Bilingual Index Oral Proficiency" (BIOP) by the Board, which also had plans to develop a Spanish subtest.

After developing and piloting the BIOP, a draft of the examination was forwarded to the PRLDEF for comment as required by the consent decree.[157] Aspira and the PRLDEF did not believe the test to be a valid instrument based on the criteria for the class incorporated in the consent decree, which specified:

> The improved method of classifying shall be designed, amongst other things, to identify those children whose English language deficiencies prevent them from effectively participating in the learning process, and who can more effectively participate in Spanish. Such improved method will identify the children according to their ability to *speak, read, write* and *comprehend* English and Spanish.[158] (Emphasis added.)

Experts for Aspira and the PRLDEF also presented arguments regarding the quality of test items related to content, validity, structure, the test's reliability in terms of values assigned to scales of measurement, the adequacy of the stimuli used in eliciting responses, and the ambiguity of pictures associated with test items.[159] The test was later withdrawn in favor of another instrument.[160]

In December of 1974, a new test battery, which measured four skills in two languages with subtests for different developmental levels, began to be developed—ostensibly because of the predicted inadequacies of the BIOP. The dispute over the ability of the instrument to identify the eligible class was only the first of many disputes to arise. Other disputes were related to policies regarding to which pupils the test would be administered, which language parts were to be included, what the cut-off scales would be, and the qualifications of those who were to administer each part of the examination battery.

The new tests were termed the Language Assessment Battery (LAB). The LAB incorporated three levels: Level I (K-2), Level II (3-6), and Level III (7-12). It was developed by the Office of Educational Evaluation, under the directorship of Dr. Anthony Polemeni, at a cost estimated by the Board at a half million dollars. It took approximately six months to complete.[161] A sample of the English-speaking population was obtained to which the English version of the test was administered and according to which it was normed.[162]

English and Spanish Testing Controversy

Once the dual-language, multi-level test was completed and normed, the procedure for testing became an issue which came quickly to the forefront. Since both parties were in sharp disagreement, the issue was resolved by the court. After modifying its position a number of times, the Board argued that the consent decree established two separate criteria for a child's entitlement to the program as granted by the decree, both of which must be satisfied in order to participate. The first, it maintained, was an "English language deficiency" which prevented the child "from effectively participating in the learning process." The second was the child's ability to participate "more effectively in Spanish, a determination

which is not reached until the first criterion has been met.[163] Furthermore, an argument was made that only an English language examination could determine whether an English-language deficiency existed.[164]

On the other hand, the PRLDEF argued that every Spanish-surnamed child must be tested in both languages and that a bilingual program must be offered to all of those who were able to learn better in Spanish than in English.[165] This issue was decided for defendants by Morris P. Glushien, Special Master, on February 26, 1975. In his decision, he ruled with the defendants that there existed a "condition of eligibility"—deficiency in English of a magnitude sufficient to prevent effective learning when English was the medium of instruction.[166] He disagreed with the PRLDEF's argument that the decree was intended to ensure for each Spanish-speaking and Spanish-surnamed child the right to be taught in Spanish simply because this would aid achievement of his full potential—even if he is competent in English.

Special Master Glushien concluded that children should be tested first in English. Those students determined to possess English-language deficiency which prevented learning in the English language should then be tested in Spanish.

> and a determination again made whether each child can learn more in English (despite his deficiency) or in Spanish, the program under the Decree to be offered only to those in the last-mentioned group.[167]

Master Glushien's decision was based on the legal underpinnings of the consent decree and two other considerations. First, this interpretation "avoids the heavy costs and serious administrative problems which would attend the need to test all children in Spanish too."[168] Second, there were hundreds of New York-born and-raised children with Spanish surnames "whose native tongue has been English all along, and who use English just as well as other children."[169]

A critical dispute remained unresolved, however. This was the issue regarding the Board's procedure for establishing cut-off scores for determination of program eligibility. The PRLDEF felt that statistically unsound procedures had been applied in norming tests and that the determination of a cut-off point at the tenth percentile was unsupportable (as discussed in the next section). Though Master Glushien felt that "these are technical issues which need not detain us now," attorneys for Aspira were not in agreement with Master Glushien's decision and sought to carry it further to Judge Frankel.[170] His reconsideration of this issue was delayed until it was heard together with the dispute over the cut-off score for eligibility for Spanish testing.

Disputes Over Cut-Off Scores

The cut-off score on the English version of the LAB was of critical importance because an additional percentile could have meant the inclusion of tens of thousands of children in the group to be tested with the Spanish version. The PRLDEF argued that the Board had not substantiated the premises for establishing a tenth percentile cut-off point.[171] The Board sought to establish the lowest possible percentile, which would, thereby, decrease the size of the potentially eligible class of children and ostensibly keep cost and manpower demands at a minimum. On the other hand, it was in the best interest of Aspira that the percentile be set higher. As proponents of bilingual education, Aspira's interpretation of the decree was not in accord with the "deficiency" criteria and would have, therefore, included a broader class of children. Judge Frankel, who presided over the dispute, stated, "The most vivid point to emerge from all the argumentation is that we confront an enormous amount of speculation and uncertainty."[172] The PRLDEF argued that the tenth percentile was not appropriate, maintaining that the English-speaking, monolingual children who scored below this percentile were not participating effectively in the educational process either. Therefore, applying the tenth percentile as the cut-off to the Spanish-surnamed children, a large percentage of whom it was assumed would score below the English monolingual children, would be tantamount to applying a zero percentile cut-off score for the Spanish-surnamed population. Therefore, the PRLDEF argued, only children with the severest English-language deficiency would be eligible, instead of children with deficiencies which prevented them from fully participating in the educational process. The Board, on the other hand, maintained that a higher percentile cut-off would do excessive "justice" for the plaintiffs. Having concluded that the Board established the tenth percentile cut-off point "without anything fairly to be deemed a rational basis,"[173] the Judge struggled with the idea of having the Board return and study the cut-off question again. He decided, however, that "time is among the luxuries of shortest supply."[174] Despite the financial crisis, he concluded that "the mandate of the law forbids our defining plaintiff class with a stringency calculated to exclude substantial numbers who ought to be included."[175] Table 11 summarizes the number of pupils falling below the tenth and twentieth percentiles. In deciding that the tenth percentile cut-off was probably too low, Judge Frankel stated:

> The court has been given sheets showing score distributions for the English sample population. The scores do not cluster notably above the 10th percentile. They tend to be dispersed rather widely below that point. There are no facts to explain the degree to which difficulties irrelevant to our concerns may account for the scores of students below the 10th percentile. There is, in short, no way of knowing how many of the English-speaking children in the lowest 10 percent are "effective participants" in any sense which could be deemed useful for our purposes.
>
> Related to this vital gap in defendants' submissions—and more critical, of course, in this case—is the absence of persuasive ground for believing that scores below the 10th percentile will fairly and sufficiently identify the Hispanic children.[176]

Furthermore,

> We have examined with maximum feasible attention the distributions of scores in the English-speaking "norming" group. As a general matter, the scores scatter widely over the lowest 10th percentile and on up to the 20th percentile. There is, again describing the data generally, a sharp tendency to cluster at or above the 20th percentile.
>
> Apart from what the score distributions show, it seems reasonable to assume, subject to what further experience may reveal, that a Hispanic student scoring better than a fifth of his English-speaking peers on the English-version L.A.B. has a level of proficiency enabling him to participate effectively in English-language instruction.
>
> In sum, for the reasons thus adumbrated, the court holds that the Spanish L.A.B. will be given to all Hispanic students whose English L.A.B. scores fall below the 20th-percentile score of the norming group.[177]

Consequently, the class of children determined to be eligible for the consent decree program were those Hispanic students who fell at or below the 20th percentile on the English LAB and who took the Spanish version of the LAB, scoring at a higher percentile on the Spanish than they did on the English. The judge acknowledged the limitation of the formulation of his decision and left the decision "open to improvement as the parties and their experts acquire—and may manage to infuse the course with—the wisdom available from further experience."[178, 179]

The LAB Is Administered

It was expected that final identification and classification of pupils entitled to receive the program as provided in the decree would be carried out in April and May. This timetable was not met. In fact, by June of 1975 more than 22,000 children in the elementary and junior high schools alone remained untested.[180] While some districts were in total compliance, having completed testing within one month, other districts were still administering the exam in September 1975. As of August 26, 1975, 12 of the 32 districts and 51 of the 103 high schools had not submitted their final test results to the Board of Education. Defendants claimed that the fact that each part of the test had a separate answer sheet created a clerical burden in the administration and collation of the results, and the absence of an answer sheet that could be machine scored caused delays in completing the LAB testing. Plaintiffs raised the question as to why an answer sheet that could be machine scored had not been developed, inasmuch as the Board maintained that hand scoring was delaying test results. The Board later did develop a machine scorable answer sheet. The PRLDEF had insisted on such a procedure because of fears of score tampering.

Other problems that arose included pupil mobility and absenteeism. Some districts submitted incorrect data. During contempt hearings, Dr. Polemeni described the various problems concerning the administration of the LAB about which he was apprised at the beginning of the test's administration in April 1975. At that time, Dr.

Table 11

REPORTS SUBMITTED BY DISTRICTS—COMPARISON OF NUMBER OF PUPILS ELIGIBLE FOR LAB (SPANISH BASED ON LAB-ENGLISH) RESULTS, 10TH% CUT-OFF AND 20TH% CUT-OFF

District	No. Pupils English LAB	English LAB 10th% cut-off	English LAB 20th% cut-off
1	9,853	2,471	3,945
2	6,828	1,244	1,889
3	5,441	2,041	3,656
4	8,209	2,098	4,150
5	2,957	755	944
6	11,870	3,899	5,114
7	14,085	4,228	6,071
8	14,183	3,478	5,141
9	15,529	4,708	6,489
10	15,416	3,384	5,129
11	4,101	488	925
12	13,510	3,867	6,318
13	4,073	1,345	1,750
14	15,273	3,538	5,707
15	13,596	2,580	3,639
16	1,967	551	802
17	4,846	1,291	1,756
18	2,105	317	557
19	11,349	2,624	4,062
20	5,438	2,077	2,717
21	4,037	684	1,253
22	2,225	244	411
23	3,466	1,750	2,220
24	8,141	1,525	2,531
25	2,653	308	515
26	800	39	74
27	3,779	929	1,265
28	3,809	811	1,337
29	2,008	304	580
30	4,798	1,001	1,519
31	2,265	366	576
32	8,125	5,000	6,004
District Totals	226,735	59,945	89,046

High Schools (by Borough)	No. Pupils English LAB	English LAB 10th% cut-off	English LAB 20th% cut-off
Manhattan	9,644	2,476	3,968
Bronx	6,627	2,075	3,212
Brooklyn	5,257	974	1,785
Staten Island	4,480	1,403	2,395
Queens	5,189	844	1,386
High School Totals	31,197	7,772	12,746
GRAND TOTAL	257,932	67,717	101,792

Source: Michael Costelloe to Richard Hiller, 24 June 1975 attachment Anthony Polemeni, Director, Office of Educational Evaluation, Board of Education to Michael Costelloe, New York, 20 June 1975. (PRLDEF files.)

Polemeni knew that one of the key problems encountered in the administration of the LAB was the lack of bilingual personnel added to the impact of layoffs on the school work force. Some districts did not have sufficient numbers of qualified Spanish-speaking personnel to administer the Spanish version of the LAB.[181]

A number of school districts sent letters and telegrams to Dr. Polemeni in May 1975, indicating that the appropriate LAB materials had not been delivered on time, thus delaying administration of the LAB. As late as September 5, 1975, three days before school began, Dr. Polemeni had been informed that all schools had enough copies of the tests. Not all districts, in fact, had sufficient LAB materials on hand. The failure to ascertain, prior to the opening of school in September 1975 whether schools had sufficient LAB testing materials caused delays in testing that could have been avoided. In the case of a particular community school district, the chancellor explained by letter the failure of central headquarters to deliver needed test materials by stating that "the Court provided little opportunity to gear up for this massive testing program."[182] Judge Frankel described Chancellor Anker's response to Community School Boards as a "note of uncomprehending plaintiveness [that] scarcely reflects a resolute determination to accomplish consent decree goals unchanged since their formulation over a year earlier."[183]

Aspira and the PRLDEF continued to object to the use of unqualified personnel in the administration and scoring of tests. They also criticized testing conditions and the lack of appropriate controls and monitors.[184]

A key factor with regard to the implementation of this massive testing program was that district superintendents held major responsibility for ensuring the proper and expeditious execution of testing. Dr. Polemeni held virtually no supervisory authority over the superintendents. The chancellor had decided that delegating the responsibility was the appropriate course because of the diversity of circumstances present in each of the districts.[185] City-wide testing involved over 250,000 pupils.

The United Federation of Teachers (UFT) also criticized the testing program and called for a test recall. An open letter to Chancellor Anker from Albert Shanker dated May 6, 1975, stated:

> Without clearly mandated procedures emanating from your office, the administration of the test is chaotic. . . . Sufficient time is not being provided in many schools and districts. . . . Teachers justifiably resent the handscoring of the exams.[186]

August 26, 1975 Ruling

Effective administration of the testing program was critical to ensure the effectiveness of the program, not only because it would establish the number of children entitled to the program, but also because completion of the testing by June of 1975 would have given individual schools and districts the information needed to prepare effectively for full implementation by September of 1975.

Aspira learned during the summer of 1975 that 12 of the 32 school districts and 51 of the 103 high schools had not submitted their results to the Board.[187] This information was obtained after numerous memoranda had been submitted to the Board and the court which articulated complaints, questions, and supporting affidavits regarding testing. On the basis of these, the court ordered the Board to submit reports on the status of testing.[188]

The lack of bilingual personnel continued as a problem in administering the LAB in the fall of 1975. Dr. Polemeni raised this problem with the chancellor; the chancellor, however, rejected requests for bilingual personnel to be assigned to that office to assist in LAB testing. He maintained that it was the responsibility of the districts to coordinate LAB testing. The chancellor also rejected requests for needed bilingual personnel by the Office of Bilingual Education because of lack of money and appropriate available personnel.[189] There was, however, other evidence presented to the court that there were sufficient qualified bilingual personnel available to deliver the program and aid in testing.[190] Judge Frankel later stated in his ruling on contempt charges with respect to personnel policies and procedures that

> the serious failures in hiring and placing qualified personnel— failures concentrated in indolent or recalcitrant districts, contrasting with districts which proceeded swiftly to fill the staffing needs—comprise a prominent and basic chapter. As has been noted, adequate people were available by the fall of 1975 to staff the program. Responsible officials of the defendant Board had knowledge at the same time that many districts were neglecting to hire these available and necessary persons, and were subverting the program by employing unqualified people. Despite this awareness of a critical default, the Board's officials took none of the possible and effective actions that would have remedied it. They contented themselves for long and irretrievable months with "reminders" to district officials of what was required to be done . . . in late December, the Chancellor remained passive, or at least ineffectual. The personnel deficiencies remained incompletely cured to the end of the 1975-76 school year.
>
> In addition to the failure to take command and order compliance, defendants neglected to create effective procedures for the filling of personnel needs. The identification of personnel requirements was for the O.B.E.; the filling of places was for the Office of Personnel. The need for coordination was, or should have been, patent. There was no effective coordination, almost no genuine effort to coordinate. O.B.E. lacked any regular procedure for communicating personnel needs to the Office of Personnel. When the latter office sent available teachers to a district, no arrangement existed to tell O.B.E. if they were hired, or if not why not. The elementary idea of some follow-up mechanism was not perceived—or, if perceived, not implemented—until December 1975.[191]

After deciding that the information submitted by the Board was insufficient, the court ordered the Board on September 9 to complete the testing of Hispanic chil-

dren. The decree and Special Circular No. 2, promulgated on July 21, 1975, required that the testing of new school entrants was to be completed within the first full week of school and absentees were to be tested along with them. The court issued an order on September 9th which required the completion of all testing within ten days after the end of the teachers' strike. It required the defendants to do no more than they were previously obligated to do. The court's deadlines were probably realistic because, before the September 9th order, the defendants had established deadlines comparable to those fixed by the court.

The chancellor issued a memorandum to Dr. Polemeni regarding his responsibility to complete LAB testing under the September 9th order on September 16, 1975—a week after the court's order. District superintendents were informed of the LAB testing procedures and also procedures for obtaining additional test materials, if needed, when the strike ended September 16. However, by October 1976 another postponed date for completion of testing had not been met. Aspira continued to press for contempt of court proceedings which were initiated in December 1975.

Testing Results

As of June 1975, the LAB identified 65,403 students eligible for the program: 51,207 in the 32 Community School Districts[192] and 7,046 in the high schools. All 65,403 students were given all parts of the English and Spanish LAB. The number of absentees or students with incomplete LAB scores totaled 58,000. As of October 23, 1975, approximately 79,971 students were identified as eligible to participate in the program, and 30,020 students remained to be tested: 23,484 in the Community School Districts and 6,536 in the high schools. As of November 26, 1975, the total number of eligible students in the districts was 75,999, with 13,158 in the districts still to be tested. On January 9, 1976, there were 76,169 students eligible for the program. There were 12,328 in the districts still to be tested and in the high schools 14,000 remained untested.[193] Further progress was made in testing between January and May of 1976. Individual school and district reports were submitted to the court. Subsequently, summary reports were prepared by Aspira and the Board. They are evidence of further progress.[194]

1975-76 Retesting Controversy

The consent decree required that Spanish-speaking or Spanish-surnamed students be identified and classified "periodically and in any event at least once a year,..."[195] With regard to this, Special Assistant to the Chancellor, Michael Costelloe, informed the PRLDEF that Hispanic students who did not qualify for the program for the 1975-76 school year would not be retested in the spring of 1976.[196] Later the Board included in the group, which it proposed not to retest, those students whose parents opted them out of the program and those students whose parents refused to have them tested in the first instance.[197]

Charging that the Board's newly announced testing policy was clearly calculated to reduce the numbers of Hispanic students who might be offered the opportunity to participate in the program, the PRLDEF brought the issue before Special Master Glushien. The PRLDEF charged:

> Moreover, their newly adopted testing procedures must be viewed with a jaundiced eye in light of the admitted confusion, and less than full implementation surrounding the Program. Since the administration of the LAB for the 1975-76 school year was admittedly imprecise; since that examination was, in a sense, breaking new ground; and since for the 1976-77 school year a modified version will be used, it simply makes no sense to rely so absolutely on the results of the old LAB to determine the testing population.[198]

The PRLDEF also argued that since the LAB had been so substantially revised it was appropriate that it be given to all Hispanic students since different norms and cut-off scores would result.[199] It proposed that instead of retesting all Hispanic students, Aspira accept a negotiated cut-off point at the fiftieth percentile, thereby requiring testing only of those who scored below the fiftieth percentile.[200]

The Board argued that "the chief basis for the Board's position as to the class to be tested are administrative, fiscal and educational."[201] It was estimated by the Board at that time that application of its criteria for testing would result in a group of approximately 80,000 children plus new entrants who would have to be tested.[202] They understandably maintained that this group would be more easily tested since they were grouped in special consent decree program classes. Retesting of the more than 250,000 students who had been tested in the previous year was prohibitive financialy. Due to the layoffs resulting from the financial crisis, there were limitations in the number of personnel in the schools qualified to administer the tests. Such persons might ordinarily have been hired to administer the tests on a per-diem basis; however, the financial crisis also made this difficult.

Retesting was not required by the court. With regard to the propitiousness of retesting pupils already found ineligible, the court concurred with the Board which had argued that

> those children who scored above the twentieth percentile on the English-version of the LAB have been participating in an English language instructional program and thus have been exposed to the English language which could only *improve* their English language skills.[203]

Contempt Ruling

Though by October of 1976, as compared to October of 1975, very substantial gains had been made in testing, the judge found the Board in contempt of court regarding the implementation of the program based on its performance. He commended the Board for the speed with

which the LAB tests were evolved. In acknowledging the barriers the Board had to surmount to ensure test completion, he stated:

> A portion of the eligible number not tested is accounted for by truancy and absenteeism, but this is a relatively small fraction. A larger factor—and one more significant in any case for present purposes—was a lack of qualified bilingual personnel for administering the tests. . . . Insufficiently staffed districts were permitted in a number of cases to rest in the erroneous and stultifying belief that qualified personnel were not to be hired until after testing disclosed the number of students eligible for the Program. Simultaneously, testing was delayed for lack of qualified personnel. Defendants knew or should have known of these obstructions, but failed to remove them.
>
> In addition, delays were experienced, in both the spring and the fall of 1975, because defendant Board failed to make timely delivery of the test materials to the community districts.[204]

With regard to children categorized as special education recipients, the Judge was particularly alarmed by the Board's performance, stating:

> A nearly total failure to meet the testing requirement with respect to special education children is likewise attributable to defendants' neglect. In April 1975 it was known that the L.A.B. would not serve for some of these students. But it was not earlier than October 1975 when sustained efforts began to develop alternatives. This inexcusable delay was among the reasons why as late as April 1, 1976, the testing of Hispanic special education students remained incomplete. And even the tardy performance in this respect seems to have been attributable in some measure to a specific request by plaintiffs' counsel in the fall of 1975 for information about the state of special education testing.[205]

1976 Data Summary

Subsequent to the contempt decision, the Board began to submit district and school data forms to Aspira, the PRLDEF, and the court. This was the most comprehensive set of information yet available on the program's implementation. Aspira was preoccupied about the quality of the program's implementation. It resolved to obtain information by studying the individual School Data Reports to obtain an indication of compliance in the areas of program design, testing, opting-out, and personnel. A school and district-by-district study of the data was submitted. The author of this study, together with Zulma Soto, Consent Decree Liaison for Aspira of New York, coordinated the efforts of consultants hired by Aspira to accomplish the summary of data. (The findings of the analysis are found here in appendix C, table 20. Table 21 is the result of the Board's compilation of the same data, but compiled later, thereby including some schools which had submitted data after Aspira's compilation. The Board's data summary includes the high schools by borough.) Aspira's analysis concluded that there were thousands of students still untested and 347 schools with more than 10 percent of their Hispanic children untested. Also, there were 351 schools for which Aspira claimed testing results or procedures were suspect or inadequate. Finally, there were 101 schools for which data was incomplete regarding unspecified aspects of implementation.

Finance

As discussed in Chapter II, the question of the Board's responsibility and obligation to fund the consent decree program was discussed and considered by the Judge prior to its signing. The PRLDEF's insistence that the court retain jurisdiction over implementation and that a dollar amount not be assigned to the program was probably the appropriate position to have taken in light of the 1975-76 peak in the city's economic crisis. A newspaper article reported the impact of the crisis on New York City public schools:

> Economy measures during 1975-76 forced the system to drop 21,000 employees, more than half of them teachers; shorten the school week for pupils 90 minutes; increase average class size by four or five pupils; and eliminate or substantially curtail important school programs and services.
>
> With schools making efforts to lessen the damage of instruction in the basic subjects, other areas—such as art and music, guidance and counseling, and library services—have suffered greatly.[206]

Paragraph 10 of the consent decree states specifically that

> the defendants are under a duty to use their maximum feasible efforts to obtain and expend the funds required to implement the Program pursuant to the timetable. They shall make good faith efforts and undertake all necessary steps to secure sufficient funds from City, State, Federal and other sources for such implementation. In the event defendants' good faith efforts fail to generate sufficient funds . . . the defendants shall be required to show good cause to this Court. . . .[207]

Financing Bilingual Education Prior to the Consent Decree

In 1970-71 approximately $6.1 million was provided by city tax-levy funds to support an estimated 420 teaching positions for bilingual teachers and teachers of English as a second language (ESL). In that same year, an additional $11.8 million through reimbursable funding was provided for bilingual and ESL instructional programs.[208]

For the 1973-74 school year, supplementary tax-levy funds provided approximately $6 million specifically for programs involving children of limited English-speaking ability. The 1974-75 school budget, however, included $11 million. These funds were distributed to local school districts on the basis of the total number of Category I and Category II children. Category II children, having the severest English deficiencies, were weighted at twice the cost of Category I children.[209] Table 12 summarizes the distribution of these funds for 1973-74 and 1974-75 school years. In addition, 10 percent of the sup-

plementary funds in 1974-75 were specifically assigned for the implementation of the pilot schools program.[210] In addition to tax-levy funds, New York City received substantial sums of money for the implementation of bilingual programs from federal and state sources. Table 13 shows that in the 1974-75 school year, there were 114 reimbursable programs budgeted, proposing to serve 76,965 pupils at a cost of $39,585,536. This funding originated from seven sources as specified therein.

In the 1975-76 school year, reimbursable funds for bilingual instruction were reduced to $30,117,683; even though there was an increase in the total number of programs, there was a decrease in the number of sites, personnel, and pupils serviced by them. Table 14 summarizes the types of programs, sources of funding, and children serviced by these programs. This was the most critical year of the city's economic crisis. Loss of reimbursable funds certainly served to compound the gravity of the situation.

In the 1975-76 school year, there was also a substantial decrease in the supplementary allocation for bilingual education. Table 15 shows that $6.5 million was allocated to districts for the purpose of bilingual instruction.

The 1976-77 Prospects

Net reimbursable funds for the 1976-77 school year remained substantially constant as compared to 1975-76. Table 16 summarizes the numbers of programs, pupils,

Table 12

PROPOSED ALLOCATION FOR BILINGUAL EDUCATION
FISCAL YEAR 1974-75

District	Total Number Students (as of Oct. 31, 1972) in Cat. 1 & 2	1973-1974 Allocation	Total Number of Students (Oct. 31, 1973) Category 1	Category 2	Total Weighted Number of Students*	1974-1975 Allocation	Change Between 1974-1975 and 1973-1974	Percent (%) Change
1	5,530	$196,312	3,304	1,657	6,618	$383,052	$ +186,740	+105.1
2	4,929	174,976	3,289	1,564	6,417	371,418	+196,442	+112.3
3	3,592	127,514	1,878	1,230	4,338	251,085	+123,571	+103.2
4	4,408	156,484	2,210	1,242	4,694	271,690	+115,206	+ 73.62
5	2,362	83,851	780	332	1,444	83,579	— 272	— 0.32
6	5,509	195,566	2,840	2,076	6,992	404,699	+209,133	+106.9
7	8,096	287,403	4,526	2,755	10,036	580,885	+293,482	+102.1
8	4,788	169,970	2,729	1,554	5,837	337,847	+167,877	+ 98.77
9	6,352	225,492	3,563	2,093	7,749	448,514	+223,022	+ 98.91
10	4,842	171,890	2,646	1,540	5,726	331,423	+159,533	+ 92.81
11	1,787	63,439	887	246	1,379	79,817	+ 16,378	+ 25.82
12	7,944	282,010	3,865	2,506	8,877	513,803	+231,793	+ 82.19
13	2,915	103,482	1,438	640	2,718	157,319	+ 53,837	+ 52.03
14	8,791	312,077	4,778	2,299	9,376	542,686	+230,609	+ 73.90
15	5,587	198,337	3,044	1,211	5,466	316,374	+118,037	+ 59.51
16	1,662	59,000	442	172	786	45,494	— 13,506	- - 22.89
17	2,497	88,642	1,156	715	2,586	149,678	+ 61,036	+ 68.86
18	1,174	41,675	437	250	937	54,234	+ 12,559	+ 30.14
19	4,656	165,285	2,229	1,008	4,245	245,702	+ 80,417	+ 48.65
20	2,535	89,991	1,523	829	3,181	184,117	+ 94,126	+104.6
21	1,917	68,052	1,173	498	2,169	125,542	+ 57,490	+ 84.48
22	752	26,698	583	201	985	57,012	+ 30,314	+113.5
23	2,207	78,347	953	494	1,941	112,346	+ 33,999	+ 43.40
24	3,810	135,250	2,357	1,250	4,857	281,125	+145,875	+107.9
25	1,316	46,717	865	413	1,691	97,876	+ 51,159	+109.5
26	316	11,219	140	55	250	14,470	+ 3,251	+ 28.98
27	990	35,146	568	232	1,032	59,732	+ 24,586	+ 69.95
28	1,738	61,698	1,116	560	2,236	129,420	+ 67,722	+109.8
29	1,138	40,399	537	204	945	54,697	+ 14,298	+ 35.39
30	3,980	141,288	2,105	1,355	4,815	278,694	+137,406	+ 97.25
31	43	1,527	445	155	755	43,700	+ 42,173	+2,761.8
32	5,923	210,263	3,280	1,962	7,204	416,970	+206,707	+ 98.31
TOTALS	114,086	$4,050,000 $35.4995	61,686 $57.8803	33,298 $115.7606	128,282	7,425,000	$+3,375,000	+ 83.33

Source: Irving Anker, Chancellor, to Marvin E. Frankel, Judge (S.D.N.Y.), New York, 16 September 1974, Attachment A1 (Compliance Report #1).

*This is calculated by adding the Category 1 students to twice the Category 2 students.

and funding sources involved. This table again indicates an increase in the total number of programs involved. More importantly, compared to 1974-75, the 1975-76 allocation indicates an almost 30 percent decrease in the number of staff members involved and/or supported by reimbursable funds.

The Economic Crisis and Contempt Proceedings

In April of 1976, subsequent to contempt proceedings but prior to adjudication, in a report to the judge, Chancellor Anker forewarned the court regarding pending problems in the implementation of the consent decree program in the 1976-77 school year. He stated:

> While budget reductions do not make it impossible to implement the Consent Decree Program, these reductions do make it more difficult to provide the program. Delays in schedulizing budgets in turn result in delays and last minute changes in organizing schools. Uncertainty as to the number of staff that may be employed, the numbers of pupils in a class, and the scope of the curriculum along with subsequent excessing and layoffs of personnel contribute to a chaotic beginning of a school year in September.[21] [*sic*]

This letter and the May 1976 reports on program compliance were the last to be submitted to the court or to Aspira and the PRLDEF until October 1976, when the Board was found in contempt of court for not having

Table 13

SUMMARY TABLE 1974-75
REIMBURSABLE BILINGUAL PROGRAMS
SEPTEMBER 10, 1974

Number of Bilingual Reimbursable Programs budgeted for 1974-75			114
Number of pupils serviced			76,965
Number of staff members involved			3,317
Number of sites in which the 114 programs are located (Brooklyn–417; Manhattan–281; Bronx–225; Queens–95; Richmond–5)			1,023
Budget of the 114 Bilingual Reimbursable Programs			$39,585,536
Sources of available funds			7
ESEA Title I	$23,895,616	Education Programs Development Act	$59,595
ESEA Title III	264,672	NYS Laws of 1974, Chapter 992	751,000
ESEA Title VII	9,490,391	NYS Funded Umbrella Programs	276,209
Emergency School Aid Act	4,848,053		

Source: Irving Anker, Chancellor, to Marvin E. Frankel, Judge (S.D.N.Y.), New York, 16 September 1974, Attachment C; Helene M. Lloyd, Board of Education of the City of New York, Division of Community School District Affairs, Office of Funded Programs, to Michael Costelloe, New York, 12 September 1974. (Aspira files.)

Table 14

GRAND TOTAL OF ALL 1975-76
BILINGUAL/ESL REIMBURSABLE PROGRAMS
MARCH 1976

	1975-76 Bilingual/ESL Programs			Grand Total 1975-76 Bilingual/ESL Programs
	Bilingual Only	ESL Only	Bil/ESL Combined	
Number of Bil/ESL Reimbursable Programs Budgeted	113	19	8	140
Number of Pupils Serviced	50,304	9,279	9,715	69,298
Number of Staff Members Involved	1,490	544	359	2,393
Number of Sites in Which the Programs are Located	431	169	117	717
Budget of Bil/ESL Reimbursable Programs	$21,527,954	$3,992,913	$4,596,816	$30,117,683
Sources of Available Funds				
ESEA Title I	7,240,685	3,897,854	4,596,816	15,735,355
ESEA Title III	108,385	3,395	0	111,780
ESEA Title VII	10,401,304	0	0	10,401,304
Education Professions Development Act	179,754	0	0	179,754
Emergency School Aid Act	2,426,458	0	0	2,426,458
NYS Laws of 1973, Chapter 720	970,017	0	0	970,017
NYS Funded Umbrella Programs	197,420	91,664	0	289,084
New York State Education Department (NYSED)	3,931	0	0	3,931

Source: Irving Anker, Chancellor, to Marvin E. Frankel, Judge (S.D.N.Y.), New York, 6 April 1976, Attachment C; Board of Education of the City of New York, Division of Community School District Affairs, Office of Funded Programs.

made greater efforts to ensure implementation of the decree.

The Board maintained during contempt proceedings that the financial crisis had been an unavoidable handicap in implementing the program. The PRLDEF argued, however, that finance could not be considered an issue in the contempt proceedings, stating:

> Despite budget cuts, the districts had to provide the necessary qualified personnel to deliver the Program. However, the defendant Chancellor never ordered a district or school to hire needed personnel, even though he knew the failure to hire necessary available staff was a major obstacle to implementation. . . . [This] is an attempt to pass responsibility to the districts despite the fact that the Court's orders are directed to the defendant Chancellor and board who never questioned their authority to implement those orders at the district level.[212]

Table 15

ALLOCATION FOR BILINGUAL EDUCATION
FISCAL YEAR 1975-76

District	Total Number of Students in Category 1*	Category 2†	Total Weighted Number of Students‡	1975-1976 Allocation
1	2,591	1,676	6,858	275,532
2	1,980	773	4,733	190,156
3	2,287	1,649	6,223	250,019
4	2,170	2,078	6,418	257,854
5	773	164	1,710	68,702
6	4,100	1,279	9,479	380,835
7	4,395	1,854	10,644	427,641
8	3,633	1,707	8,973	360,506
9	4,997	1,859	11,853	476,215
10	3,873	1,884	9,630	386,902
11	582	468	1,632	65,568
12	3,986	2,494	10,466	420,489
13	1,444	412	3,300	132,583
14	3,774	2,184	9,732	391,000
15	2,810	1,127	6,747	271,072
16	562	265	1,389	55,805
17	1,629	480	3,738	150,181
18	501	303	1,305	52,431
19	2,857	1,476	7,190	286,871
20	2,307	709	5,323	213,861
21	979	672	2,630	105,665
22	508	272	1,288	51,748
23	1,822	486	4,130	165,930
24	2,016	1,143	5,175	207,914
25	572	249	1,393	55,966
26	78	59	215	8,638
27	1,085	438	2,608	104,781
28	1,120	555	2,795	112,291
29	424	319	1,167	46,886
30	1,001	518	2,520	101,245
31	459	252	1,170	47,007
32	5,231	1,073	11,535	463,438
Total	66,546	30,877	163,969	6,587,735

Source: Aspira of New York Inc., files.

*Category 1 consists of students in the 10th percentile and below on the May 1975 Language Assessment Battery Test (English).

†Category 2 consists of students above the 10th percentile up to and including the 20th percentile.

‡A weighting factor of 2 is used for students in Category 1.

The PRLDEF also asserted that, inasmuch as the Board had not informed the court prior to the contempt proceedings, as provided for in the consent decree, that finances were preventing the program's implementation, it really was not in a position to raise this plea during contempt proceedings. Furthermore, prior to December 22, 1975, at the initiation of contempt proceedings, the chancellor had not issued a policy explicitly requiring the use of basic tax-levy funds by districts for the consent decree program.[213]

Contempt Findings

In his October 22, 1976 decision, the judge placed the question of finance within the context of the broad considerations of the contempt proceedings. He stated:

> When the balance has been struck, however, weighing all of defendants' problems, it comes down decisively for the plaintiffs. While tightened budgets have given persistent trouble throughout the system, there is no clear claim, and no basis for a claim, that shortages of money account for or justify the defaults on which today's decision against defendants is rested. Both at the time of the events and in reaching today's decision, the court has made allowances for the problems of the teachers' strike, the subsequent shortening of the school day, and the attendant reorganization of class schedules and teacher assignments. Those, along with the rest of defendants' undoubted difficulties, fail to defeat the charges of inattention, lethargy, and drift which are the central ones resolved adversely to defendants.[214]

Table 16

SUMMARY TABLE OF GRAND TOTALS FOR 1976-77
REIMBURSABLE BILINGUAL PROGRAMS*
NOVEMBER 30, 1976

Bilingual Program	December 8, 1976
Number of Bilingual Reimbursable Programs Budgeted for 1976-77	172
Number of Pupils Serviced	69,123
Number of Staff Members Involved	2,177
Number of Sites in Which the Programs are Located	663
Budget of the Bilingual Reimbursable Programs	$30,160,994
Sources of Available Funds	8
ESEA Title I	12,942,399
Impact Aid	1,052,489
ESEA Title IV C Minigrants	12,948
ESEA Title VII	12,357,344
Emergency School Aid Act	2,433,474
Education Programs Development Act	164,467
NYS Laws of 1973, Chapter 720	1,000,000
NYS Funded Umbrella Programs	197,873

Source: Irving Anker, Chancellor, to Marvin Frankel, Judge (S.D.N.Y.), New York, 10 March 1977, Attachment F: Board of Education of the City of New York, Division of Community School District Affairs, Office of Funded Programs, Table III, November 30, 1976, Summary Table of Grand Totals for 1976-77 Reimbursable Bilingual Programs.

*A summary total for November 8, 1976 and a Net Change column appearing in the original table are omitted here.

The Federal Government's Position

Though not cited during contempt proceedings, the federal government took the position in November 1974 that local education agencies were required to use basic tax-levy funds for programs designed by such districts (and required by either self-examination or legal determination) to provide special educational programs for language-minority children whose limited English-speaking ability prevented them from fully participating in the educational process. An internal HEW memorandum of the Office of Civil Rights states:

> In this situation, it is our view that all basic instructional services and basic instruction materials must be financed out of general State and local funds. This includes money for salaries for all classroom teachers (professionals and paraprofessionals) providing regular classroom instruction and for curriculum materials used in regular classrooms. Services regularly provided to English-speaking children during the course of a regular school day from State and local sources. Accordingly, it is our view that in this situation LEAs could not use Title I or Title VII money to provide bilingual services to non-English-speaking children unless an equal floor of State and local expenditures (both in terms of dollars and nature of services) first exists. . . .
>
> The Under Secretary has stated in testimony before Congressional committees that it is the position of this Department that it is *not* the responsibility of the Federal Government to finance compliance for LEA's with the requirements of the *Lau* v. *Nichols* case.[215]

Regrettable Timing

The mandate to implement the consent decree program was ill timed—certainly not by choice on the part of either party—for many reasons. The more blatant of these was, perhaps, the economic crisis. As stated elsewhere, cuts in funding resulted in reorganization and the elimination of many programs in the schools. This led to misconceptions, which in turn increased fears and negative attitudes toward the consent decree program, which was perceived to be displacing other programs.

Hernan LaFontaine rejected the notion that funds were taken from other programs to implement the consent decree program. Regarding the sources of funds for the program, Hernan LaFontaine stated:

> Generally most bilingual programs have been funded through special services. Title VII, the Federal Bilingual Education Act, with Federal funding; Section 962, of the State Education Law, with state funds; and the Board of Education's Program 30, Module 5, with city tax money—all are exclusively for bilingual education. If the funds weren't used for bilingual education, they wouldn't have been available at all.[216]

While perhaps this was an overstatement, the Board and local districts were under the obligation to implement the consent decree program. An attorney for the Board stated, for instance, that

> federal monies, Title VII monies, may be used to supplement the consent decree program, but these funds cannot be used as the source of funding to implement the consent decree program. This must be done out of tax-levy funds.[217]

Another issue was that the relationship between the central Board and the Community School Districts was particularly strained by 1975. Charges of mismanagement were made by both parties.[218] The pressure by the Board to implement the bilingual program defined by the consent decree was probably interpreted by local boards as just one of a number of attempts by the Board to usurp what they perceived as their own legitimate budgetary powers as defined by the school decentralization law.

Concern on the part of many interest groups regarding the infringement of the power of local school boards resulted in a study, the findings of which were published in June of 1975. That study, "The Role of Community School Districts in New York City's Expense Budget Processes: Proposal for Changes in the Administration of the Decentralization Law," was conducted by the Citizens' Budget Commission, Inc., and was funded by the Rockefeller Brothers Fund. It concluded that "the imprecise language of the law had allowed retention of a great deal of fiscal control by the Central Board of Education."[219] In terms of budget preparation and the asserted lack of input on the part of Community School Districts, the study was critical:

> Some community districts have submitted to the chancellor unrealistically high budget requests and thereby lessen their function as a reliable source of information for budget development.
>
> It is difficult to measure increased community participation in budget preparation. At the district level, district officials tend to view parents as parties to be "consulted," but excluded from any real decision making. At the Central Board level, a similar view appears to be held with respect to community school board input.[220]

However, in terms of the powers given to local districts to administer their budgets, within the parameters of their allocations, the study found that the Board's allocation of funds by formulae had increased the objectivity of funding but had imposed concurrently

> rigid restrictions on community district budget administration. The resultant inability of community districts to change their budget schedules without the Chancellor's prior approval curtails their discretionary spending even within their district allocation.[221]

The chancellor did not use these powers. He exerted his authority after the December 22, 1975 order to show cause by issuing letters to the Community School Districts requiring their compliance with Special Circular No. 2, establishing minimum educational standards. This letter did not make any mention, however, of the financial obligation on the part of districts to provide the program from tax-levy allocations. The chancellor did, however, threaten to supersede the districts should they

fail to submit reports detailing steps to be taken to rectify their noncompliance with the consent decree.[225]

Community School Boards Request for Bilingual Education

A study of the 1974-75 budget requests submitted to the central Board by Community School Districts concluded that bilingual education was the third-highest combined district priority.[226] These were extreme exceptions. In fact, many were surprised when in the midst of the city's economic crisis and protests by many other districts for more funds to implement the consent decree program, District 1 refused in December of 1975 to accept Title VII funds in the amount of $334,000.[224] Aspira perceived this refusal together with the dismissal of bilingual personnel as obstructing the implementation of the consent decree program. The chancellor's staff recommended that he supersede the district. This recommendation was made in January 1976, after District 1 had still failed to submit plans detailing how it intended to spend tax-levy funds for the consent decree program. These plans had been due in August 1975.[225] As of the fall of 1976, District 1 was not superseded.[226] It remained among the districts with the highest percentage of students opting out of the program.[227] District 30 also used budgetary arguments to explain or defend its substantial noncompliance with the suit before and after the chancellor's (act of) supersedure in February 1976. District 30 argued then that to implement the program it would have to bus children at a cost estimated to be between $200,000 and $1 million dollars.[228]

Summary

The policy that districts spend tax-levy funds for the education of the *Aspira* class of children of limited English-speaking ability was a major element of the net policy impact of *Aspira*. The contempt proceedings were particularly important in ascertaining that specific policies were issued to assure the use of basic tax-levy funds for bilingual education for entitled children. It was not until the 1976-77 school year that Board policy required that supplementary budget tax-levy funds, unit allocation 30, and federal reimbursable funds were not to be the sole source of the program's funding. As of 1976-77, in order to receive unit appropriation 30 funds, districts were required to submit "a statement that these funds will supplement and not supplant funds provided through the tax-levy allocation for all students."[229]

In summary, when one considers that the consent decree program had involved approximately 70,000 children, the fiscal expenditures including tax-levy and reimbursable sources were a far cry from those reported in the early 1970s.[230]

REFERENCES – CHAPTER III

1. The term "accommodation" in the context of this study serves to distinguish an instance of policy reform in which the nature of such change did not involve the substance of existing policies, but was provision for the exception to existing policy under specified conditions. "Accommodation" includes exceptions as well as situations in which policy was changed temporarily.
2. Nathan Glazer, "The Limits of Social Policy," *Commentary*, September 1971, p. 52.
3. Aspira, Consent Decree at para. 4.
4. Ibid., at para. 1.
5. Ibid.
6. Ibid., at para. 4.
7. Ibid., at para. 8.
8. Ibid., at para. 9.
9. Ibid., at para. 10 and 7.
10. Neal Gross, Joseph B. Giacquinta, and Martin Bernstein, *Implementing Organizational Innovations: A Sociological Analysis of Planned Educational Change* (New York: Basic Books, 1971), p. 39.
11. Ibid., p. 40.
12. Thomas R. Dye, *Policy Analysis: What Governments Do, Why They Do It, and What Difference It Makes* (Ala., Georgia: University of Alabama Press, 1976), p. 3.
13. Harmon Zeigler and Karl Johnson, *The Politics of Education in the States* (New York: Dobbs-Merrill, 1972).
14. Arthur Wise, *Rich Schools, Poor Schools: The Promise of Equal Educational Opportunity* (Chicago: University of Chicago Press, 1968).
15. Westinghouse Learning Corporation–Ohio University, *The Impact of Head Start: An Evaluation of the Effects of Head Start on Children's Cognitive and Affective Development* (Washington, D.C.: Office of Economic Opportunity, 1969).
16. David J. Armor, "The Evidence on Busing," *The Public Interest* 28 (Summer, 1972): 90-126; Idem, "The Double Double Standard," *The Public Interest* 31 (Spring 1973): 119-31.
17. Jerome T. Murphy, "Title I of ESEA: The Politics of Implementing Federal Education Reform," *Harvard Educational Review* 41 (1971): 35-63.
18. Jeffrey L. Pressman and Aaron B. Wildavsky, *Implementation: This Being the Saga of the Economic Development Administration* (Berkeley: University of California Press, 1973).
19. Pressman and Wildavsky, *Implementation*, p. xiii.
20. Aspira Consent Decree at para. 11. The extent of the Board's consultation with Aspira was criticized by the agency. Anglada Interview. However, the consent decree did not specify the nature or the extent of such "consultation."
21. Memorandum Ordering Notice of Decree, 72 Civ. 4002 (S.D.N.Y. August 29, 1974) (unreported Memorandum).
22. Aspira, Consent Decree at para. 14.
23. Irving Anker, Chancellor, Memorandum to Community School Board Members, Community and Assistant Superintendents, and Principals, New York, 29, 30 August 1974, p. 2.
24. Board of Education of the City of New York, News Bureau, Office of Public Affairs, News Release, N-13-1974/85, 29 August 1974, pp. 1-2.
25. Aspira, Consent Decree at para. 9.
26. Ibid., at para. 8.
27. Ibid., at para. 9.
28. Ibid., at para. 4.
29. Ibid., at para. 1. This task was already in progress at the signing of the consent decree. The failure of the survey conducted by the Board in May of 1974 resulted in the Board's action to develop appropriate instruments.
30. Ibid., at para. 5, 6.
31. Certainly other factors were also operating to increase resistance. These included the apparent lack of substantial effort on the part of both parties, Aspira of New York and the Board, to inform the public about the substance of the suit before August 29, 1974.

REFERENCES – CHAPTER III (Continued)

32 Unlike the elementary and junior high schools, the high schools in New York City are operated by the Central Board.

33 Children meeting specific physical, psychological, and pedagogical criteria are categorized as children requiring special education. Such programs are coordinated by the Division of Special Education.

34 Community Service Society, Committee on Education, *Report on Bilingual Pilot Schools in New York City: A Study of a Court-Ordered Program for Pupils with English Language Difficulty* (New York: Community Service Society, 1975), p. 5.

35 Defendants' Memorandum of Law in Response to Plaintiffs' Request for Relief in Connection with Contempt Proceedings, 72 Civ. 4002 (S.D.N.Y. September 20, 1976) (unreported Memorandum).

36 Community Service Society, *Report on Bilingual Pilot Schools*, p. vi.

37 Ibid., p. vii.

38 Ibid., pp. vii-viii.

39 Ibid., p. 22. For a list and description of the pilot schools see: Board of Education of the City of New York, Division of Educational Planning and Support, Office of Bilingual Education, *A Description of Pilot Schools–Consent Decree 1974-1975* (New York: Board of Education, March 1975).

40 394 F. Supp. 1161 (1975), Memorandum and Order on Motion to Vacate Judgment (July 11, 1975).

41 Irving Anker, Chancellor, Board of Education, Progress Report on the Implementation of Consent Decree, 19 September 1974, pp. 6-8.

42 Subsequent sections of this chapter will relate to the substance of noncompliance.

43 Many teachers had called the PRLDEF and Aspira to question their layoffs in light of the decree. Anglada Interview and Aspira of New York files; "Complaints" and "Telephone Contacts."

44 Aspira v. Board of Education, 72 Civ. 4002, slip op. at 5 (S.D.N.Y. October 22, 1976) [hereinafter cited as Aspira, Opinion on Contempt].

45 Ibid., at 6.

46 Ibid.

47 Memorandum of the Court, Transcript of Hearings, 72 Civ. 4002 (S.D.N.Y. September 9, 1975).

48 U.S., Commission on Civil Rights, *Puerto Ricans*, p. 118.

49 Findings of Fact, Conclusions of Law, and Order at 48, 72 Civ. 4002 (S.D.N.Y. September 9, 1975) (unreported Order).

50 Aspira, Opinion on Contempt at 10.

51 Order to Show Cause, 72 Civ. 4002 (S.D.N.Y.); Also see the accompanying supporting affidavit (unreported Memorandum).

52 Aspira, Opinion on Contempt at 11-12.

53 Ibid., at 12.

54 These hearings were presided by Judge Charles J. Hartenstine, who had been appointed by Judge Frankel. Regrettably, Judge Hartenstine died before making a recommendation on the disposition of the motion.

55 Aspira, Opinion on Contempt at 12.

56 A monitoring program was designed in June of 1976 for implementation in September of 1976. School Data Forms and District Summary Forms were drafted in August for the elementary and junior high schools. Richard J. Hiller, PRLDEF, to Arnold Webb, Board of Education, New York, 17 August 1976. (PRLDEF files.) As of October 26, 1976, Aspira had not received drafts of proposed forms for reporting implementation of high school programs. Herbert Teitelbaum, PRLDEF, to Michael J. Cecere, Assistant Corporation Counsel, New York, 26 October 1976. (PRLDEF files.)

57 Anglada Interview.

58 Aspira, Opinion on Contempt at 9.

59 Aspira, Consent Decree at para. 4.

60 Ibid.

61 Defendants' Findings of Fact and Conclusions of Law at para. 31-32, Aspira v. Board of Education 72 Civ. 4002 (S.D.N.Y. August 2, 1976) (unreported Memorandum in PRLDEF files) [hereinafter cited as Aspira, Defendants' Findings of Fact and Conclusions of Law].

62 Ibid., at para. 35.

63 PRLDEF, Internal Memorandum, Plaintiffs' Alternatives, n.d. (PRLDEF files.)

64 Aspira, Defendants' Findings of Fact and Conclusions of Law at para. 34.

65 Board of Education of the City of New York, Office of the Chancellor, Special Circular No. 2, 1975-76 to Community School Board Chairmen, All Superintendents, Executive Directors, Heads of Bureaus and Principals of All Day Schools, New York, 21 July 1975, p. 1.

66 Board of Education, Office of the Chancellor, Special Circular No. 114 to Community School Board Chairmen, All Superintendents, Executive Directors, Heads of Bureaus and Principals of All Day High Schools, New York, 26 June 1975.

67 Anglada and Vazquez Interviews. Jose A. Vazquez was a former Chairman of the Council. Another publication by Aspira of New York that relates to this issue is: Isaura Santiago, *Aspira v. Board of Education: A History* (New York: Aspira of New York, 1977), pp. 104-106.

68 Board of Education, Special Circular No. 2.

69 Transcript of Contempt Hearings at 723-24, 72 Civ. 4002 (S.D.N.Y. February-April 1976) (unreported proceedings in PRLDEF files) [hereinafter cited as Aspira, Transcript of Contempt Hearings].

70 Ibid., at 725-26.

71 Board of Education, Special Circular No. 2, p. 3. See note.

72 Aspira, Opinion on Contempt at 22.

73 Memorandum and Order on Motion to Vacate Judgment at 2-3, 72 Civ. 4002 (S.D.N.Y. July 11, 1975) (unreported Memorandum).

74 Ibid., at 3.

75 Judge Frankel denied grounds for the allegations of procedural errors.

76 Affidavit of Irving Anker, sworn to May 6, 1975 at para. 10-15, 72 Civ. 4002 (S.D.N.Y.) (unreported Affidavit in PRLDEF files).

77 Anglada Interview.

78 Ibid.

79 Interview with Zulma Soto, formerly Consent Decree Liaison for Aspira of New York, New York, 19 January 1977.

80 Plaintiffs' Memorandum in Opposition to Motion to Vacate Judgment at 9, cited in Memorandum and Order on Motion to Vacate Judgment at 4, 72 Civ. 4002 (S.D.N.Y. July 11, 1975) (unreported Memorandum).

81 Ibid., at 9.

82 Ibid., at 10.

83 During the litigation of this issue the term "opting-out" was coined and became common usage by the parties.

84 Memorandum and Order on Motion to Vacate Judgment at 5, 72 Civ. 4002 (S.D.N.Y. July 11, 1975) (unreported Memorandum).

85 Ibid., at 3.

86 Ibid., at 6.

87 Ibid., at 7.

88 Ibid., Appendix, at 9-10, Board of Education of the City of New York, Office of the Chancellor, Special Circular No. 11, Pupil Participation in the Program to Be Provided According to the Consent Decree of August 29, 1974, New York, July 1975.

89 Ibid.

90 Council of Supervisory Associations, "Bilingual Education Curbed Sharply by Federal Court Judge," *Council Newsletter*, 28 August 1975.

91 Districts 1, 7, and 30 are particularly criticized in Plaintiffs' Findings of Fact, at para. 212-240, 72 Civ. 4002 (S.D.N.Y. August 1976).

92 Aspira, Opinion on Contempt at 27-28.

93 Ibid., at 28.

94 Aspira had maintained that there were cases in which schools proposed to bus children to magnet-feeder schools despite the fact that there were sufficient numbers of children to offer the program in the neighborhood school. This was a result of the fact that there was no policy enforced which established the minimum number of children which would require program implementation in the neighborhood school.

REFERENCES – CHAPTER III (Continued)

[95] Transcript of Hearing at 13-16A, 72 Civ. 4002 (S.D.N.Y. April 1, 1976).

[96] Aspira, Opinion on Contempt at 9.

[97] Ibid., at 30-31.

[98] Ibid., at 23.

[99] Ibid., at 30.

[100] Aspira, Consent Decree at para. 7.

[101] Ibid.

[102] Aspira, Opinion on Contempt at 14.

[103] Soto Interview and see: "Feldman Warns Against Distortions in Bilingual Program," *New York Teacher*, December 1974; and Parents Against Racism in Education, Council on Interracial Books for Children, "Save Bilingual Ed," Bulletin, n.d., p. 3.

[104] Soto Interview and Hernan LaFontaine, quoted in "Some Hard Questions About Bilingual Education," *New York Times*, 15 January 1975, p. 64.

[105] "Expand Teaching in Spanish," *New York Post*, 29 August 1974.

[106] "UFT Adopts Standards for Bilingual Education," *New York Teacher*, 3 November 1974, p. 24.

[107] United Federation of Teachers, Circular, Position on Bilingual Education, n.d. (Personal Files.)

[108] Ibid.

[109] Ibid.

[110] United Federation of Teachers, Advertisement, "Where We Stand: Bilingual Education: Not 'Why' But 'How'," in *New York Times*, 3 November 1974.

[111] Ibid. It should be noted that the National Education Association took quite a different position with regard to the education of Chicano children supporting the use of Spanish strongly. National Education Association, Department of Rural Education, *The Invisible Minority*, Report of NEA-Tuscan Survey on the Teaching of Spanish to the Spanish Speaking (Washington, D.C.: NEA, 1966), p. v.

[112] Ibid.

[113] Hernan LaFontaine, quoted in "Badillo Urges Hearings on Bilingual Education Program Here After Anker's Charges," *New York Times*, 10 November 1974.

[114] Ibid.

[115] Ibid.

[116] Peter Kohler, WCBS Editorial Director, "Bilingual Battle," 21 November 1974, 6:55 P.M.; *"Badillo Pide Vistas," 'El Tiempo,'* 13 November 1974.

[117] In this suit, Aspira of America filed an *amicus curiae* brief supporting the plaintiffs. Brief *Amicus Curiae* Submitted on Behalf of Aspira of America, Inc., Chance v. Board of Examiners, 70 Civ. 4141 (S.D.N.Y. October 20, 1970). This case was particularly important because it represented a victory for the community (Luis Mercado was another plaintiff in the case). It may have served to increase a view, on the part of certain elements of the community, of the courts as a viable change agent.

[118] Harvey B. Scribner, Chancellor, Board of Education of the City of New York to New York City Board of Education, New York, 13 October, 1970, p. 4.

[119] "Principals Illiterate? The Claim Stirs a Battle," *New York Post*, 10 June 1974.
It is interesting to note that only one reversal of the appointment of a Hispanic principal was uncovered by this study. This case involved a Puerto Rican principal in an East Harlem public school. The State Division of Human Rights overturned her appointment and ordered her replaced by a non-Puerto Rican man who had contended he was better qualified for the position. "Reverse Bias Is Found in City Schools Post," *New York Times*, 7 January 1975, p. 1.

[120] "Anker Takes Charge in Ethnic Survey Row," *New York Post*, 28 April 1976; "Principals Face Contempt Charges," *Long Island Press*, 22 June 1976, p. 16; "Principal Defies Court on Ethnic Data," *New York Times*, 23 June 1976.

[121] "Racism Charged to School Boards," *New York Times*, 5 June 1976.

[122] Howard L. Hurwitz, "Dual Language School Systems Disservice to Students," *Education Digest* 40 (May 1975):30-32.

[123] "Study: City Layoffs Savage Hispanics, Blacks and Women," *Daily News*, 15 April 1976 and "Rights Panel Finds Layoffs by City Hurt Minorities," *New York Times*, 15 April 1976, p. 39.

[124] Reply Memorandum of Board of Education and the Chancellor, 72 Civ. 4002 (S.D.N.Y. June 1974) (unreported Memorandum).

[125] Board of Education, Eligibility Requirements for License as Bilingual Teacher for Common Branch Subjects (Spanish) in Day Elementary Schools (Grade 1-6) (S.315b) (ALTA) (Bilingual C.B.) (Spanish) March 1974. Requirements 6 and 7 are part of general regulations required of all school personnel.

[126] "Discrimination Against Puerto Rican Teachers, Supervisors, and Children," *Don Peyo: La Voz Del Educador Puertorriqueno*, 24 November 1976, p. 3.

[127] Aspira, Transcript of Contempt Hearings, at 779, 782-83.

[128] Defendants' Findings of Fact and Conclusions of Law, 72 Civ. 4002 (S.D.N.Y. August 2, 1976) (unreported Memorandum) [hereinafter cited as Aspira, Defendants' Findings of Fact and Conclusions of Law.]

[129] Aspira, Transcript of Contempt Hearings, at 581-82.

[130] See: "UFT Adopts Standards for Bilingual Education," "UFT Asks Staff Proficient in Spanish to Fill Out Personnel Form," "Any Teacher Can Learn Spanish," and "Feldman Warns Against Distortions in Bilingual Program," *New York Teacher*, Nov.-Dec., 1974.

[131] Aspira, Transcript of Contempt Hearings, at 776.

[132] Ibid., at 830.

[133] Aspira, Defendants' Findings of Fact and Conclusions of Law, at para. 43.

[134] Layoffs of teachers were estimated by Chancellor Anker to be 11,000 in the 1974-76 school years. "Latest School Row: Seniority," *New York Post*, 16 July 1976, p. 9.

[135] "Schools Have to Hire Bilinguists Amid Firings," *Daily News*, 4 September 1975.

[136] Zulma Soto, Bilingual Liaison–Consent Decree, Aspira of New York, Memorandum to All Staff: "Consent Decree Update," New York, 5 September 1975. (Aspira of New York files.)

[137] Findings of Fact, Conclusions of Law, and Order at 48, 72 Civ. 4002 (S.D.N.Y. September 9, 1975) (unreported Order).

[138] Editorial, "Schools and Seniority," *New York Times*, 4 January 1976.

[139] "Latest School Row: Seniority," *New York Post*, 16 July 1976.

[140] Table 6 (p. 84) shows that there were over 1,600 Spanish-surnamed teachers in the system in 1974-75.

[141] A resolution was passed unanimously by the Board on August 26, 1976, establishing bilingual licenses as a separate tenure area. "Bilingual Licenses Now Separate Tenure Areas," *Don Peyo*, 24 September 1976, p. 1.

[142] Aspira, Transcript of Contempt Hearings, at 860-62, and Defendants' Findings of Fact and Conclusions of Law, at para. 89.

[143] Ibid.

[144] Other clarifications of policy occurred in 1976. See: Frank Arricale II, Executive Director, Division of Personnel, Board of Education of the City of New York, Personnel Memorandum No. 142 to Community Superintendents and High School Superintendents, New York, 29 July 1972 and Frank Arricale II, Executive Director, Division of Personnel, Board of Education of the City of New York, Personnel Memorandum No. 150 to Community School Board Chairman, All Superintendents, Executive Directors, Directors and Bureau Heads, New York, 5 October 1976.

[145] Aspira, Transcript of Contempt Hearings, at 1050.

[146] Ibid., at 860-62, and Defendants' Findings of Fact and Conclusions of Law at para. 89.

[147] Aspira, Defendants' Findings of Fact and Conclusions of Law at para. 85.

[148] Ibid., at para. 45.

[149] Ibid., at para. 45.

[150] Plaintiffs' Findings of Fact and Conclusions of Law, at para. 108-9, 72 Civ. 4002 (S.D.N.Y. August 2, 1976) (unreported Memorandum) [hereafter cited as Aspira, Plaintiffs' Findings of Fact and Conclusions of Law].

[151] Ibid., at para. 110.

[152] Aspira, Opinion on Contempt at 13-14.

REFERENCES – CHAPTER III (Continued)

153 See: appendix C, table 19.

154 Chapter I presents a discussion of the history of these subjective oral classification scales.

155 Aspira, Consent Decree at para. 1.

156 Howard S. Tilis, William Weichum, et al., *Scale For Rating Pupils' Ability to Speak English* (New York: Board of Education, October 1974).

157 Irving Anker, Chancellor, Board of Education, to Herbert Teitelbaum, Attorney, PRLDEF, New York, 1 October 1974. (PRLDEF files.)

158 Aspira, Consent Decree at para. 1.

159 The following Memoranda from PRLDEF files summarize the position taken by experts for plaintiffs: Jose E. Dones to PRLDEF, New York, n.d. (PRLDEF files); Pedro Algarin and Awilda Orta, Consent Decree Task Force, Committee on Testing, Aspira of New York Memorandum to PRLDEF, New York, n.d.; Richard J. Hiller, PRLDEF to Dr. Anthony Polemeni, Board of Education, 8 December 1975.

160 Over the PRLDEF's objection, there was city-wide administration of the BIOP; nowever, the results were never published or made available to Aspira or the PRLDEF. See: Aspira, Plaintiffs' Memorandum to the Special Master Concerning L.A.B.–English Testing, 21 January 1976, p. 3.

161 Defendants' Memorandum of Law in Response to Plaintiffs' Request for Relief in Connection With Contempt Proceedings at 4, 72 Civ. 4002 (S.D.N.Y. September 20, 1976) (unreported Memorandum).

162 Memorandum on Testing Procedures at 2, 72 Civ. 4002 (S.D.N.Y. May 28, 1975) (unreported Memorandum).

163 Aspire, 72 Civ. 4002 slip op. of Special Master, at 2 (S.D.N.Y. February 26, 1975).

164 Ibid.

165 Ibid., at 1.

166 Ibid., at 2.

167 Ibid., at 4.

168 Ibid., at 5.

169 Ibid., at 5.

170 Had the issue of cut-off scores been decided at this point, instead of three months later, compliance with the test administration timetable might have been expedited.

171 On the other hand, the PRLDEF's experts could not substantiate what percentile should be established as the cut-off.

172 Memorandum on Testing Procedures at 5, 72 Civ. 4002 (S.D.N.Y. May 28, 1975) (unreported Memorandum).

173 Ibid., at 7.

174 Ibid., at 8.

175 Ibid., at 9.

176 Ibid., at 9.

177 Ibid., at 7-8.

178 Ibid., p. 12.

179 The LAB was revised again in February of 1976.

180 Appendix B, table 18 gives figures reported by the Board. This table, however, does not indicate the total number of children tested. Also, this figure does not reflect the many thousands of high school and special education children who remained untested.

181 Aspira, Transcript of Contempt Hearings at 1265-1318.

182 Irving Anker, quoted in Aspira, Opinion on Contempt at 20.

183 Ibid.

184 Plaintiffs' Memorandum on Testing, 72 Civ. 4002 (S.D.N.Y. August 2, 1975) (unreported Memorandum).

185 Aspira, Defendants' Findings of Fact and Conclusions of Law at para. 138.

186 Albert Shanker, President, United Federation of Teachers, Chancellor, Board of Education of the City of New York, New York, 6 May 1975, reprinted in UFT, Bulletin, "Shanker Urges Test Recall," 11 May 1975.

187 Aspira, Plaintiffs' Findings of Fact and Conclusions of Law para. 66.

188 Appendix B, table 18 summarizes the data submitted by the Board.

189 Ibid., at para. 67-70. In this document reference is made to Hernan LaFontaine's testimony in which he stated that he repeatedly requested personnel needed to implement and monitor the program effectively.

190 For example, see table 10, which documents that there were over 1,500 teachers available who had passed the bilingual licensing examinations, but who were not appointed.

191 Aspira, Opinion on Contempt at 18-19.

192 See appendix B, table 18 for a breakdown by district of pupils tested.

193 Irving Anker, Chancellor, Board of Education, to Marvin E. Frankel, Judge, United States District Court Southern District of New York, New York, January 1976. Enclosure: Progress Report on the Implementation of the Consent Decree in Aspira v. Board of Education, January 9, 1976. (Aspira of New York files.)

194 For summaries see appendix C, tables 19-22.

195 Aspira, Consent Decree at para. 1.

196 Herbert Teitelbaum, Attorney, PRLDEF, to Morris Glushien, Special Master, New York, 22 December 1975. (PRLDEF files.)

197 Memorandum of the Board of Education with Respect to Identity of Class to Be Administered the L.A.B. for Purposes of Assessment for the School Year 1975-76 at 2, 72 Civ. 4002 (S.D.N.Y. January 21, 1976) (unreported Memorandum).

198 Plaintiffs' Memorandum to the Special Master Concerning L.A.B. –English Testing at 2, 72 Civ. 4002 (S.D.N.Y. January 21, 1976) (unreported Memorandum).

199 Ibid., at 9.

200 Ibid., at 10.

201 Memorandum of the Board of Education with Respect to Identity of Class to Be Administered the L.A.B. for Purposes of Assessment for the School Year 1975-76 at 2, 72 Civ. 4002 (S.D.N.Y. January 21, 1976) (unreported Memorandum).

202 Ibid., at 4.

203 Ibid., at 9.

204 Aspira, Opinion on Contempt at 14-20.

205 Ibid., at 21.

206 "New York City Schools Weather Fiscal Crisis But a Study Shows that Impact Was Felt by Entire System in the Academic Year," *New York Times*, 21 June 1976, p. 34.

207 Aspira, Consent Decree at para. 10.

208 Harvey B. Scribner, Chancellor, Board of Education of the City of New York, News Release, N-224-1971/72, New York, 15-16 May 1972, pp. 2-3.

209 The allocation formula for these funds was incorporated in Board of Education of the City of New York, Minutes of Meetings 1974-1975. Resolution 69, adopted 14 August 1974.

210 Allocations under Appropriation 30 included funds for the operation of the Office of Bilingual Education of the Board of Education, which was the office responsible for the funding and monitoring of these programs.

211 Irving Anker, Chancellor, Board of Education, to Marvin E. Frankel, Judge, United States District Court, Southern District of New York, New York, 6 April 1976, p. 1 (PRLDEF files).

212 Plaintiffs' Critique of Defendants' Proposed Findings of Fact 72 Civ. 4002 (S.D.N.Y. September 13, 1976) (unreported Memorandum).

213 Aspira, Plaintiffs' Findings of Fact and Conclusions of Law at para. 98-101.

214 Aspira, Opinion on Contempt at 29.

215 Martin H. Gerry, Deputy Director, Office of Civil Rights, Department of Health, Education and Welfare, Office of the Secretary, to Richard L. Fairley, Director, Division of Compensatory Education, Office of Education, Department of Health, Education and Welfare, Washington, D. C., 13 November 1974.

216 Hernan LaFontaine, quoted in "Some Hard Questions About Bilingual Programs," *New York Times*, 15 January 1975, p. 64.

217 Aspira, Transcript of Contempt Hearings, at 444.

218 "Questions About '70 School Law Revived in Wake of Charges of District Abuses," *New York Times*, 4 November 1974.

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[219] Citizens' Budget Commission, "The Role of Community School Districts in New York City's Expense Budget Processes: Proposal for Changes in the Administration of the Decentralization Law," (New York: 1975), Vol. 42, No. 1, n.p.

[220] Ibid., n.p.

[221] Ibid., n.p.

[222] Irving Anker, Chancellor, Board of Education to Community School Board Chairman, Community Superintendent, Community School District, Subject: Consent Decree Compliance, New York, 29 December 1975, Attachment A in Compliance Report, May 1976. (Aspira files.)

[223] Citizens' Budget Commission, "The Role of Community School Districts," Appendix D, n.p.

[224] Aspira, Plaintiffs' Findings of Fact and Conclusions of Law at para. 212-219.

[225] Ibid., at para. 219.

[226] The chancellor of the Board of Education has the authority to supersede or overrule a Community School District in those cases in which a decision is in conflict with Central Board policy and authority. In the event the Community School Board should continue to be in conflict with the Central Board, the chancellor, subject to appeal procedures, has the power to remove the Community School Board and appoint a Receiver.

[227] See appendix C, tables 21 and 22.

[228] "Aspira Blocks," *Long Island Press*, 17 February 1976.

[229] Board of Education, Minutes of the Meetings of the Board of Education, Resolution No. 52, para. 5.

[230] See Jenkins, "Bilingual Education," appendices C, D, E, F, G, and H, as a point of comparison of reimbursable funds expended prior to *Aspira* and the expenditures reported here in tables 12-16.

CHAPTER IV: CONCLUSIONS, REMAINING POLICY ISSUES, AND POLICY RECOMMENDATIONS

References for Chapter IV begin on Page 110

Introduction

This study has examined policy precedents and other factors which contributed to the *Aspira* v. *Board of Education of the City of New York* suit and the impact of that suit on policies and practices in educating children of limited English-speaking ability. In reconstructing the historical background of the litigation, this study placed the suit within the context of changing language-of-instruction policies in the United States and Puerto Rico. It analyzed factors related to the Puerto Rican community's experience on the mainland and the position taken by community interest groups on educational issues. The investigation then identified policy precedents for educating children of limited English-speaking ability, particularly language-of-instruction policies on city, state, and federal levels which predated the litigation.

The study presented policy issues within the context of the suit's litigation. Differences in policy positions taken by Aspira, the officials of the Board of Education, their legal counsel, and the court were analyzed. The bases for accommodation, negotiation, and the resolution of disputes were discussed and documented. Finally, the study analyzed the process and product of policy determination. These reforms were generated during the first two years of the decree's implementation and were largely the result of either court intervention or further negotiation and consultation between the litigating parties.

In examining the differences in policy goals and means recommended by the Board, Aspira, and at times, the court, the study relied on an abundance of litigation documents, testimony, and reports submitted to the court by the Board. These articulated the position taken by the Board, its key administrators, and its legal counsel on the policy issues studied here. Interviews were also conducted with key individuals who, at varying points, played a role in the process of policy reform and who, in most cases, were not called upon to testify. Rare insight into the policy change process was possible due to the author's access to the files of key individuals and groups. Particularly important were the files of Aspira and the PRLDEF. These contributed to the author's insight into personalities, strategies, and confidential negotiations between the litigants. Such access is rare, particularly in cases such as this, in which, to date, the suit is still in litigation and the court retains jurisdiction over the consent decree's implementation.

Included in the records of Aspira and the PRLDEF were internal documents and correspondence between the litigants. In addition, there were internal Board of Education documents pertinent to the education of children of limited English-speaking ability in New York City schools which were obtained during fact finding, discovery, the interrogation of witnesses for both sides, and documents retrieved under writ of public information. These and many other papers were often not entered into the court record and were, therefore, inaccessible to the public. All of these materials, together with the literature on the subject and relevant newspaper articles of the period studied, made possible the reconstruction of the history and the forces contributing to the policy change process and an analysis of the ultimate policy determinations.

As a model for policy research, this study has demonstrated that the analysis of the causes and determinants of policy change in some cases resists the kind of investigation based on controlled and rigidly defined analytic models having as their goal inferencial projections to other situations. As was evident in the policy change process studied here, this was due to the multiplicity of variables influencing/affecting a given problem in the field of education as well as to the complexity of government, public institutions, and interest groups which can play a role in educational policy-making. This analysis holds special relevance to future research of the role of minority groups and the courts as agents in the process of policy change, policy determination, and policy implementation.

The study has laid the groundwork for the next necessary step, an analysis of continuing policy impact. The policy issues and related variables which are identified here must be taken into consideration in developing a research design to measure the quality and quantity of the impact of these policies on children participating in the program.

Conclusions

The research reported herein has demonstrated that: (1) Prior to *Aspira* v. *Board of Education* there were many complex forces and factors operating on city, state, and federal levels which served, in effect, as their social, legal, and institutional policy underpinnings; (2) Litigation brought by a Hispanic minority group with the goal of changing existing educational practices was an effective policy change strategy for a portion of the class of children of limited English-speaking ability which the group initially sought to represent; (3) Carrying out the litigation, consultation, and negotiation which the suit demanded required the investment of substantial, sustained, and long-term efforts on the part of the litigating

parties for more than a four-year period; (4) The suit resulted in policy reform and accommodation in areas including minimum educational standards, parental rights, assessment, personnel, and finance; (5) Had the consent decree incorporated more specific policy statements, its implementation might have been expedited; (6) Aspira and the PRLDEF's consistent monitoring of the consent decree's implementation resulted in 1976 in contempt proceedings and judicial reviews which were effective in increasing the Board's compliance with the decree; (7) Had the PRLDEF not insisted on a court-ordered consented agreement, which included a timetable for implementation, the specific elements of the bilingual educational program to be implemented, and basic criteria for personnel in the program, the program's implementation would have suffered a setback between 1974 and 1976 as a result of the city's financial crisis; (8) As a result of *Aspira* v. *Board of Education*, by the end of the 1975-76 school year, a broad-based bilingual educational program was in operation in New York City public schools, serving over 58,000 pupils and involving approximately 1,500 bilingual personnel.[1]

Remaining Policy Issues and Policy Recommendations

It has been concluded that during the first two years following the signing of the consent decree the suit was instrumental in changing policies and practices for educating children whose limited English-speaking ability prevented them from participating fully in the educational process and who learned better in Spanish. Yet, many questions must still be addressed and answered. These relate to the future policies and practices of the Board of Education of the City of New York, the policy concerns and objectives of the Puerto Rican community, and the future role of the federal government and the courts with respect to bilingual education policies.

The Board of Education

As documented by this study, changing the policies and practices of the Board of Education of the City of New York was a massive and complex process. This process has, as yet, not come to an end. Policy change is often a cyclical process. Change causes further change. Thus, as a result of policy changes brought about by the suit, many questions and issues have arisen. These questions and issues will need to be answered in coming years.

In terms of the future of the policies generated by the consent decree, one important question is whether the bilingual consent decree program is the most appropriate model for educating children of limited English-speaking ability. At this writing, there is no research to substantiate whether it is or is not. Though Aspira has repeatedly requested that data regarding the implementation of the program be collected on a more systematic and controlled basis and that an impartial third party design and implement research to study the program's impact on children, no such research has been conducted.[2]

A second question which remains unanswered is to what extent the Board is pedagogically committed to meeting the educational needs of all children of limited English-speaking ability through bilingual education. Concern regarding this commitment grows when one considers that very little information is available regarding the education of other than Hispanic language-minority children. This includes Greek, Italian, Chinese, Haitian children, as well as those children of limited English-speaking ability belonging to other language-minority groups in New York City schools. Though an early policy statement by the Board indicated that the program would apply to children of any language-minority group meeting eligibility criteria,[3] subsequent policy statements more often specified Hispanic children. In addition, qualifying tests for determining the English or native language proficiency of children belonging to these language-minority groups were never developed. Program and school data reports, in all but a few instances, did not solicit or obtain information regarding the education of other than Hispanic children entitled to the program. During the monitoring of the consent decree, central Board of Education personnel did not require that Community School Districts demonstrate that the program was being implemented for all language-minority children.[4] There are many New York City bilingual programs funded through tax-levy and reimbursable programs which are designed to serve children of language minority groups other than Spanish. These include, Greek, Russian, Italian, French-Haitian, and Chinese students.

Will each language-minority group have to sue to obtain "a program"? Why haven't other language-minority groups sued the Board of Education as of yet? The need for such action by other language groups may be precluded by a "Lau Plan" which was developed in the summer of 1977. This is a three page statement which constitutes an agreement between the Office of Civil Rights and the Board. It stipulates that the Board will provide a bilingual instructional program for all language-minority children whose limited English-speaking ability prevented them from participating fully in the educational program. Compliance with the Plan and other agreements regarding personnel will be monitored by the Office of Civil Rights. These agreements are the result of the investigation into discriminatory practices in New York City schools which the Office of Civil Rights began in 1972. The implications of the Plan are still unclear. At this writing, the Board has not made public the timetable, design, or methodology for complying with the plan.

Other evidence that Board of Education officials are unclear about the future of bilingual education in the city's schools is found in a statement made in 1976 by Bernard R. Gifford, then Deputy Chancellor, two years after the signing of the decree. It expressed his judgment that

> bilingual programs today are a mixed bag. . . . The city hasn't made up its mind whether it is going to proceed with bilingual education or with bilingual and bicultural,

which implies the need for teachers who understand the culture.[5]

The policy issues related to the hiring of personnel on the basis of cultural background (including language proficiency) continued to plague the Board in 1977.

Findings published by the Office of Civil Rights in November and December of 1976 maintained that the Board of Education was in violation of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 with regard to personnel practices.[6] Faced by the possibility of the loss of federal aid, the Board entered into an agreement in which it is required to implement a policy which will increase the number of minority-group members in teaching positions while promoting the integration of teaching staffs. Within a number of years, the plan should result in a greater number of minority teachers in all districts.[7] What impact this new policy will have on the implementation of the consent decree program and bilingual education is unclear.

Another policy question which still remains is whether the Board views bilingual education as a viable educational alternative for all children, including monolingual English-speakers and bilingual children who can effectively participate in the educational process in English. As of 1976, the Board had not issued a broad-based policy position regarding bilingual education other than in the litigated, compensatory, and transitional context of the consent decree. Some observers have maintained that as a result of the consent decree the number of children receiving the program, and thereby the number of parents and personnel involved in the program, have increased and an interest group has been created which will ensure the future of bilingual education in New York City schools.[8] Others fear that the ineffectiveness of the program's first years of implementation (as supported by the findings and judgments of contempt proceedings) may have also served to discredit bilingual-bicultural education.[9]

Another policy issue which remains to be addressed is the question of whether the consent decree program is appropriate for categories of special education children who are of limited English-speaking ability.[10] After the signing of the decree, there was disagreement between the Board and Aspira as to whether children in special education programs were entitled to the program at all. The Board insisted that they were not. Continued resistance resulted in intervention by the court. It was agreed that children falling into some, but not all, categories of special education would be offered the program.[11] During the spring and fall of 1976 there was still controversy as to the categories of children which were to be tested and the designs of programs to be offered. By April 1, 1976 eligibility testing had not been completed. Aspira had suggested that, since there was a critical absence of research on which to base programs for these groups of children, it was in their interests to establish pilot experimental programs for the various categories of exceptionality in an effort to find solutions and alternatives.[12] Since this study was limited to the 1974-76 school years and since the issue is still under negotiation and debate, these efforts are not analyzed here. However, the absence of research and, therefore, alternatives may be viewed as part of the same cycle of neglect which brought about the suit. There is, therefore, a particular need to study and find alternatives for groups of children who already suffer from a variety of handicaps.

Recommendations

A number of recommendations which may have an impact on future policy determination emerge from the study. These focus on the need for further research. Inasmuch as the first critical years of the study have elapsed and there is every indication that it is being broadly implemented, there is a need for longitudinal study which would investigate the effects of the consent decree program on all educational levels. Factors to be considered include pupil achievement in subject areas, language development (in both languages), program design, program administration, and personnel. Other important questions to be answered through systematic, long-range study include: (1) How accurately/adequately does the LAB identify children who do not participate effectively in the educational process due to their lack of proficiency in English? This would include looking at the educational experience of children who scored above the 20th percentile on the English LAB; (2) Are ethnic minority bilingual teachers more effective than nonethnic and bilingual teachers in educating language-minority children, and if so, to what extent and in what ways? (3) How do consent decree participants compare to those Hispanic children who scored below the 20th percentile in the LAB-English but scored yet lower on the LAB-Spanish? (These children were not entitled to the program); (4) How did pupils who opted-out of the consent decree program (either by choice or parental withdrawal) compare to students who participated in the program? (5) How does the progress of students participating in magnet school programs (those programs within a district which brought together children attending schools in which there were not a sufficient number of entitled children to implement a complete program) compare to the achievement of those children who attended neighborhood school programs? (6) Why did parents withdraw their children from the program? Answers to these questions are vital if future policies are to educate language-minority children more effectively.

The Puerto Rican Community

The study has demonstrated that the Puerto Rican community, through a variety of interest groups and policy-change strategies many years prior to the Aspira suit, sought to change educational policies determining the language-of-instruction and other practices in public schools on the island and the continental United States. In New York City the community was only marginally successful. Though many bilingual educational programs were implemented in the late 1960's, these ad-

dressed the needs of only a fraction of children of limited English-speaking ability. Despite the growing political power of the Hispanic community on a national level and increased federal policies in support of bilingual education, it was not until the consent decree was implemented in New York City schools that policy change was achieved, encompassing a substantial number of Hispanic children of limited English-speaking ability.

In three respects, however, the consent decree did not respond to policy issues which Aspira of New York had intended to pursue. First, Aspira and the PRLDEF brought the suit on behalf of 182,000 children. Only 58,000, described as having limited English-speaking ability, were ultimately entitled to the bilingual consent decree program. What happened to the remainder of the class? These were children who, Aspira acknowledged, had a knowledge of English. However, the agency maintained that, because of the Board's past failure to offer these children access to educational materials and experiences, they had steadily fallen behind their peers. Aspira felt that children falling into this category should be offered a program which would serve to compensate for this perceived inequality of educational opportunity. Such a program would increase the pupil's access to educational experiences and materials, give Puerto Rican children the opportunity to catch up with their peers, and offer the pupil the opportunity to participate in an enriched educational program which would strengthen and further develop the pupil's competence in his first language. Aspira maintained that the only program which could meet these objectives was a bilingual-bicultural program.[13] This program could not legally be construed as a pupil's right since education is not a right. The lack of evidence and legal underpinnings for a case of liability rendered the issue unpursuable through the courts.

The need to continue to scrutinize policies for educating Hispanic children has recently been supported by a study which was conducted by the Education Commission of the States, National Assessment of Education Progress Project. It compared the achievement of Blacks, Whites, and Hispanics of three age levels, 9, 13 and 17, over a five-year period from 1970-75. Specific skills studied were in the areas of science, mathematics, social studies, and career and occupational development. The study found that Hispanic students in the northeast, with New York City students being the majority of this group, lagged behind Hispanic students in the west in all but one area. The most critical deficits in achievement for Hispanic students in the northeast were in the areas of social studies and mathematics, in which they scored 18 and 17 percentage points respectively below the national average. This is alarming when one notes that the sample studied included only Hispanic students who were determined to be English-speakers. Hispanics in the northeast scored consistently below both Hispanics in the west and Blacks on a national level in the areas of science and social studies. In reading this was also the case at ages 9 and 13. A commentary on the data incorporated in the report concluded that:

> Hispanic students do not receive equal benefits from the educational system of this country. The mere availability of public education is simply not enough. . . . (2) The data raise questions about the effectiveness of school systems as they presently exist to meet the needs of minority students. According to the National Assessment data, the deficits in achievement for Hispanos have not changed in the last six years. Hispanic students appear no closer to equal benefits in 1975 than they were in 1971.[14]

Aspira's position that maintenance bilingual-bicultural educational programs may serve to equalize opportunity is one of only limited proposals.[15] To obtain policy reform on the local level, which would encompass Puerto Rican children who are ineligible for the consent decree program, would require using other than litigation strategies. These might include organizing efforts to bring about the reform of administrative or legislative policies governing state compensatory funds under Title I, Urban Education, and other education aid programs. This would require scrutinizing and redefining such terms as "giftedness." There seems to be a resistance to defining bilingualism in any but a compensatory context. Funds for the gifted, for instance, could encompass bilingual children in the definition of children eligible to receive these funds. Gifted children's bilingualism would then be viewed as an asset, and programs could serve to nurture bilingual skills.

Another strategy for community input in policy must include the community's organizing efforts to obtain representation on Community School Boards. This is an important mechanism for community participation. Other powerful and influential groups have organized and obtained influence in this regard.

Yet another strategy may require that the community support experimental research in linguistics to determine whether children suffer irreparable linguistic handicaps when educated under traditional "immersion" or English as a Second Language approaches. Findings related to the occurrence or nature of such impact on this group of children could serve as the basis for future policy reform.

The second policy issue which Aspira sought to address was the question of whether Puerto Ricans should have the right to maintain the Spanish language whether they are on the island or the continental United States. Knowledge of English is viewed as necessary and desirable by leadership in the New York City community. The issue is not the desirability of one language as opposed to the other but, rather, whether the Puerto Rican should be required to give up one for the other. Unlike members of most other language-minority groups, Puerto Ricans are already citizens. Aspira has taken the position that since Puerto Ricans are citizens and since the official language of Puerto Rico is Spanish, educational policies in the continental United States should more adequately reflect and respond to these realities.[16]

The constitution of Puerto Rico stipulates that the two cultures, American and Puerto Rican, shall coexist on

the island. The civil rights of Puerto Ricans are similar to those of other Americans. The citizenship of Puerto Ricans, however, can be viewed as being unequal to that of other Americans, who are free to travel throughout the United States in search of work, education, and other opportunities without fear that they will be deprived of their rights because of language policies. In addition, there is a question as to whether the boundary for the coexistence of the two cultures is defined by the island's territory. It would seem that the mainland Puerto Rican has an additional burden should he return to Puerto Rico after years in an educational system which has deprived him of the opportunity to maintain his first language.

For this reason, Aspira has argued that public educational systems on the continent in which there are significant numbers of Puerto Rican children should adopt policies which provide the Puerto Rican the opportunity to learn English effectively while maintaining Spanish language skills. This policy issue, however, is most directly related to the political status of Puerto Ricans and to the nature of the agreement that established the commonwealth status of the island. For the Puerto Rican the future resolution of this issue may rest more appropriately on the federal level rather than in the courts.

The third policy area in which Aspira sought policy reform was its goal to obtain a bilingual-bicultural program for the class of children bringing the suit. As discussed earlier (in Chapter II) there was not a sufficient research base to argue that culture had to be a component of the remedy to which children were entitled in school. The Board of Education strongly resisted the notion that it was obligated to reinforce the cultural heritage and ethnicity of language-minority children. The only agreement that both parties could come to was that, wherever possible, the materials used in the program would reflect the culture of the children and would avoid negative stereotyping.

The issue of whether public educational institutions should be required to adopt policies which help to maintain a child's ethnic identity has been the subject of much debate. This controversy has emerged most strongly on the federal level and will be discussed in that context.

Another issue which must be addressed here is the viability of the courts as mechanisms for ensuring the rights of minority groups. Though the suit was effective in obtaining a bilingual educational program for children who were being deprived of access to educational experiences, and could, therefore, be viewed as an effective change agent, the question is whether the community really has access to the court system. In the *Aspira* case, for instance, how long can two nonprofit community agencies like Aspira and the PRLDEF continue to infuse the funds, efforts, and resources necessary to remain abreast of the program's implementation and to perform functions such as consultation, negotiations, and litigation?[17] Though on two occasions the PRLDEF has been awarded attorneys' fees, these have not fully compensated the agency for its investment of resources in the suit.[18] For litigation and costs up to the signing of the consent decree, the PRLDEF was awarded $57,000 of $80,000 dollars in documented expenses. For efforts in bring about the ruling on contempt, an agreement was reached whereby the Board was to pay the PRLDEF $100,000 in documented expenses. However, time and costs incurred with respect to many of the complaint, monitoring, consultation, and negotiation functions were not paid in full.[19] Aspira, however, has not been compensated for any of its efforts in bringing about the suit, maintaining a complaint system, responding to requests for information and orientation, monitoring of compliance with the decree, analyzing voluminous reports on the program submitted by the Board, or other functions associated with representing the class of children bringing the suit. The law does not provide a mechanism for reimbursement of expenses, other than attorneys' fees, to such nonprofit community efforts in civil rights litigation.

Aspira states that between 1970 and 1976 the agency incurred expenses which exceed $250,000 in carrying out responsibilities related to the suit.[20] Since the signing of the consent decree, Aspira has faced its own financial crisis. It received only one grant in the amount of $25,000 which was specifically earmarked for efforts related to litigation. The remainder of the funds have come out of the agency's general operating budget. To carry out the major efforts of program monitoring, both Aspira and the PRLDEF continue to depend on the voluntary support of individuals and groups in the field. These include teachers, students, administrators, parents, and community organizations which act as a network of information.[21]

In light of the magnitude of the cost of the litigation, how accessible is it to the community? In addition, what leverage do the courts offer minority groups? How meaningful are administrative or court challenges to a school system's federal aid? Such action would adversely affect the best interest of the very children whom agencies like Aspira and the PRLDEF seek to represent and defend (inasmuch as they are a portion of the population served by federally aided programs). An indication of this is the substantial leverage that lies in the recently negotiated minority hiring plan between the Office of Civil Rights and the Board. On the other hand, District 1 refused to accept Title VII funds in 1975-76 as part of a controversy over the implementation of the consent decree program.

It would seem, then, from a community perspective, that the courts are a possible ally in policy change. However, there are many limitations in this approach, in terms of the community's access because of the financial burden involved and because of the limitations in the powers of the courts. They most often must make judgments based on the letter and interpretation of existing laws and are often reluctant to tamper with the pedagogical decisions of school authorities. Finally, the courts are frequently inappropriate arenas in which to discuss the ideal programs and policies which a community may seek to implement.

The Courts

Questions remain regarding the court's role in the *Aspira* case. What role, for instance, will the court and the two community agencies involved continue to play in defining educational policies generated by the consent decree? At what point will the judge presiding over the case decide that plaintiffs' rights have been satisfied and subsist from his vigilance over the program? To some degree,[22] evidence that court intervention was necessary to ensure implementation of the program is found in Judge Frankel's contempt decision which stated:

> The institution of the contempt proceedings triggered a notable access of attention and energy. This is to defendants' credit. It is also evidence, however, supportive of plaintiffs' position that defendants' contrasting inattention before these proceedings was unjustified.[23]
>
> The dramatic increase in attention and sense of urgency after the contempt charge accounts in large measure for the gratifying improvement in compliance statistics during the first half of the current calendar year. Plaintiffs' motion for a contempt adjudication, climaxing a steady course of pressure before that, must be acknowledged as a major cause of the change. Defendants must bear major responsibility for the prior history of delayed and defective performance. . . .[24]
>
> Defendants insist vigorously that they are *now* in compliance and that a finding of contempt would therefore be impermissibly "punitive." Assuming there is total compliance at this time, the conclusion would not follow. Defendants were in contempt for a long time, extending to and after the institution of this proceeding. Today's adjudication is appropriate not merely to record the violations and to compensate plaintiffs for their corrective endeavors, but to underscore the importance of avoiding similar disobedience in the future. . . .[25]

The fact that in January of 1977, the PRLDEF filed another motion which sought to find the Board in contempt of court once again indicates that there is a need for continued court monitoring of the program. Judge Frankel denied the motion on the grounds that it was too soon after the first contempt decision. He did not, however, conclude that there were not grounds for a contempt of court ruling, but rather, gave the Board more time to carry out the contempt order. An issue raised here is that the monitoring of the consent decree is financially draining not only on the Board, Aspira, and the PRLDEF, but on the court as well.

In terms of the potential impact of the courts in ensuring the rights of language-minority children, recent legislative developments have expanded the legal underpinnings on which the courts can act. Section 204 of the Equal Educational Opportunities Act of 1974 states:

> No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its student in its instructional program.[26]

Section 207 of the same Act gives to individuals the right to bring suit in federal district courts to obtain relief for violations of Section 204. Other sections of the Act attempt to spell out priorities and remedies for courts to follow in desegregation cases.[27] Thus, the failure to establish any similar priorities for denials of equal educational opportunity through language exclusion may be seen as congressional indication that district courts have their usual remedial powers in dealing with that kind denial of equal educational opportunity. In any case, the Act gives an alternative to the Title VI route should it appear that such a route is desirable.[28]

Another important development for supporters of maintenance bilingual-bicultural education was the final outcome of the *Lau* v. *Nichols* case in San Francisco. On October 10, 1976 a consent decree was entered into by school authorities, which requires the implementation of a full maintenance bilingual-bicultural educational program for all major language groups.

Recommendations

In terms of future policy considerations, this study suggests that it is necessary for court officials to maintain jurisdiction over the implementation of court-ordered and consent decree plans. If educational systems were not resistant to policy change, litigation proceedings would likely not be necessary. This resistance is probably reflected during implementation phases. In executing a monitoring role, court officials may consider the establishment of a commission of impartial pedagogical and legal experts to oversee the implementation of the program. The naming of such commissions has precedent in desegregation cases but not in cases related to language-of-instruction policies.

The courts might serve as effective policy change agents in cases similar to *Aspira* by insuring that programs are evaluated. Based on their authority to order public educational systems to develop plans to remedy infractions of the right of equal educational opportunity, and to require the submission of reports on the implementation of such plans, the courts could conceivably require educational systems to evaluate the impact of these plans on children. These evaluations could serve as a basis from which the court and the educational system can draw in making policy decisions, in revising policies reached in the absence of substantial evidence, and as mechanisms for identifying viable alternative models and plans. To carry out such research, the court might call upon an impartial third party which could be required to involve litigants in the design and implementation of the evaluation.

Finally, if courts are to be accessible to minority groups, and if organizations which represent them are to be effective advocates of policy reform, the economic burdens associated with such roles must be alleviated. Legislation or legal precedents are needed which will allow for the reimbursement to nonprofit community groups in those cases in which the efforts they exert result in increasing or enforcing the rights of a class of minority group members.

Also, a comparative study is critically needed which would look at plans and decisions, at the implementation of other orders in other cities relating to bilingual education, at integration orders as they affect language-minority groups. Common problems in the definition and implementation of policies in a variety of areas, including those studied here, might aid in the development of a model, or at minimum a framework, from which the courts could take guidance.

The Federal Government

Though the Bilingual Education Act of 1974 was supportive of bilingualism and biculturalism, the issue of government policies designed to finance ethnic diversity has been the subject of much debate. Some have termed these policies "affirmative ethnicity."[29] It has been argued that such policies serve to balkanize America and increase intergroup conflict.[30] Others have attacked biculturalism for what has been perceived as an approach which serves to segregate Hispanic children.[31] Though these claims have been challenged,[32] the reality is that the policy issue goes beyond the question of pedagogical research or proof for their support. The policy of bilingualism and biculturalism challenges many of the myths related to the goals of education and its function in America. It will, therefore, probably continue to be the subject of debate until these broader questions of educational goals and policies are addressed.

The most current literature suggests that after a period of substantial support and growth, bilingual education is meeting a variety of challenges in many states throughout the country.[33] The national movement has been placed in the position of mounting a defense against negative findings.[34] That bilingual education has met, at minimum, a mixed reaction from the public is evident in the many articles in the English-speaking and Hispanic media in the past years which have supported or criticized bilingual education. For example, the *New York Times*, which had applauded the consent decree and admonished the Board in an editorial entitled "Dragged into Progress" in 1974,[35] in other editorials took what could be perceived to be a contrasting position. In one 1975 editorial entitled "Divisive Languages," the paper warned against the dangers of bilingualism[36] and a 1976 editorial entitled "Bilingual Danger"[37] took a similar position.

An advocate of the bilingual-bicultural approach has stated that "Ethnic tensions are created and aggravated not by bilingual education but, on the contrary, by notions of language and cultural superiority that have formed a basis for much of the resistance to bilingual education."[38] However, there is not unanimity about the efficacy of bilingual education in the Hispanic community either. A popular Hispanic magazine, *Latin New Yorker*, published an article entitled "A Bilingual Education Won't Even Get You a Seat on the Unemployment Line," which was critical of the approach—particularly with respect to college programs, which the author alleged did not result in meaningful employment.[39]

The Bilingual Education Act, Title VII, will be reviewed in 1977. It has already been the subject of much debate. A bill introduced by Representative Quie seeks to change the definition of bilingual education and the criteria for selection of students for the program. Both would substantially change the bilingual programs now being provided under the Act. In the first instance, it would change the definition to make bilingual education available in "all courses or subjects of study which will allow a child to progress effectively through the education system"[40] or "to achieve competence in the English language."[41] With respect to eligibility for participation in it, the program amendments require that

> participation in such programs shall be limited to children of limited English-speaking ability, and, in determining eligibility to participate therein, priority shall be given to those children whose limitations in English-speaking ability are most severe.[42]

These recommendations constitute a substantial departure from the policies incorporated in the 1967-68 and 1974 laws and subsequent amendments.

Many insist that ideologies of assimilation persist in America.[43] The public as well as leaders in the educational field remain divided not only as to the efficacy and the goals of bilingual instruction but also in regard to the design of programs.[44] Equally persistent are demands for equal educational opportunity.

Recommendations

There is a need to hold the federal government accountable for the changes in school systems which it has brought about through legislation, influence, or coercion. In this regard it is time that the Office of Civil Rights, for instance, study the impact of the *Lau* Remedies[45] as well as the policy changes incorporated in plans which it has required from school districts as part of civil rights compliance investigations, based on the May 2 HEW Memorandum.[46] The impact of Title VI as well as subsequent education amendments on educational policies affecting language-minority children must also be investigated if we are not to work at cross purposes.

Title VII policies have also been deficient in this respect. Ineffective monitoring and evaluation procedures by the federal government have resulted in what has been criticized as the lack of "substantial evidence" that bilingual education makes a difference in student achievement. Though some have acknowledged "the fact that bilingual projects have been poorly implemented, that qualified teachers and adequate curricula have been in short supply, and that relatively little attention has been paid to project evaluations,"[47] they have erroneously concluded that the federal government should not support policies favoring maintenance bilingual-bicultural education.

Though the most controversial negative findings regarding the impact of Title VII bilingual education programs are confined to one report,[48] and though it has been the subject of well-based criticism regarding the reliability and the validity of its findings,[49] it is one of

the first reports of its kind. This is a timely indication that institutions must be held accountable for providing the administrative checks, the leadership, and the funds necessary to ensure that bilingual educational programs are carried out appropriately and that their impact and findings are responsibly reported to the public and analyzed by public educational authorities in terms of their relevance to existing educational policies.

REFERENCES – CHAPTER IV

[1] See appendix C, tables 19-22 for a district breakdown.

[2] Anglada Interview. Mario Anglada related that during negotiations which attempted a settlement to the contempt charges brought by Aspira in lieu of a court order this issue was raised. In addition to recommendations regarding the program's administration, he advised that the Board and Aspira approach a private funding source to finance a longitudinal study of the consent decree program by an impartial third party. Aspira sought input by both parties in the design and implementation of the investigation. The agency made this recommendation, according to Mr. Anglada, because it had fears that the Board or other parties would attempt to issue a report on the effectiveness of the program based on the unrepresentative first two years of implementation.

[3] Board of Education, Special Circular No. 114.

[4] Interview with Hernán LaFontaine, Executive Director, Center for Bilingual Education, Board of Education of the City of New York, New York, 10 November 1977.

[5] Bernard R. Gifford, quoted in "Bilingual Education Stirs Debate in New York City," *New York Times*, 21 June 1976.

[6] Martin H. Gerry, Director, HEW, Office of Civil Rights, to Irving Anker, Chancellor, Board of Education of the City of New York, Washington, D.C., 9 November 1976 and Martin H. Gerry, Director, Office of Civil Rights, HEW, to Irving Anker, Chancellor, Board of Education of the City of New York, Washington, D.C., 8 January 1977.

[7] "Assignment of Teachers by Race Stirs Apprehension Among Them and Administrators in New York City," *New York Times*, 23 September 1977, p. 22.

[8] Richard J. Hiller and Herbert Teitelbaum, "A Court Ordered Bilingual Program," p. 71.

[9] Interview with Ernesto Loperena, Executive Director, Aspira of New York, New York, 10 November 1977 and *New York Times*, 21 June 1976.

[10] Special education programs are administered by the central Board through the Division of Special Education. They serve children who meet criteria based on physical, emotional, and learning disabilities established by law and policy.

[11] It was agreed that about 2,600 were probably eligible for the program.

[12] Richard J. Hiller, PRLDEF, to Michael Costelloe, Board of Education, New York, 24 June 1976.

[13] Anglada Interview.

[14] Education Commission of the States, National Assessment of Educational Progress Project, *Hispanic Student Achievement in Five Learning Areas: 1971-1975* (Washington, D.C.: Government Printing Office, 1977), 1.31.

[15] There are many models for bilingual education. However, in terms of other models for educating children of limited English-speaking ability, the two other approaches which have been implemented and tested broadly are English as a Second Language and language immersion programs. Neither was very effective in educating Puerto Rican children in New York City schools as documented here in Chapter I.

[16] Anglada Interview.

[17] It is important to note that the legal process is demanding of plaintiffs in this type of case, because the burden of proof is on them and also because the courts are generally reluctant to interfere in public institutional authority unless "substantial" wrong is demonstrated.

[18] 65 F.R.D. 541 (S.D.N.Y. 1975), and Aspira, Contempt Opinion, at 33 and at ii.

[19] Ibid., and Interview with Peter Beinstock, Attorney, Puerto Rican Legal Defense and Education Fund, New York, 4 November 1977.

[20] Loperena Interview.

[21] Ibid.

[22] One may view as evidence that federal systems like the Office of Civil Rights would have ultimately insured the rights of children of limited English-speaking ability, in spite of *Aspira*, the negotiated agreement between OCR and the Board regarding minority hiring practices. See: "Assignment of Teachers by Race Stirs Apprehension Among Them and Administrators in New York City," *New York Times*, 23 September 1977, p. 22.

[23] Aspira, Contempt Opinion at 26.

[24] Ibid., at 28.

[25] Ibid., at ii.

[26] *Equal Educational Opportunities Act of 1974, U.S. Code* vol. 20, sec. 204.

[27] Ibid., 1706. *U.S. Code*, vol. 20, sec. 207, 1706 (supp. 1975).

[28] Roger Rice, "Recent Legal Developments in Bilingual Bicultural Education" *Inequality in Education* 19, February 1975: 51-53 (p. 53).

[29] Epstein, *Language, Ethnicity, and the Schools*, p. 3.

[30] Ibid., Letters to the Editor. *Washington Post*, 27 September 1974.

[31] Gary Orfield, "Response II," in *Language, Ethnicity, and the Schools*, by Noel Epstein, pp. 85-88.

[32] Jose A. Cardenas, "Response I," in *Language, Ethnicity, and the Schools*, by Noel Epstein, pp. 71-84.

[33] "Bilingual Bicultural Education 'On the Backburner'," *Un Nuevo Dia*, Lakewood, Colorado, Summer 1977—Vol. 3, No. 2 in which major problems in the implementation of bilingual education programs in Colorado, California, Texas, Massachusetts, and on a national level.

[34] See: "Study Questions Bilingual Education," *Washington Post*, 19 April 1977 and U.S. Comptroller General, *Report to the Congress, Bilingual Education: An Unmet Need*, May 1976.

[35] "Dragged into Progress," *New York Times*, 2 September 1974, (Editorial).

[36] "Divisive Languages," *New York Times*, 28 October 1975, p. 32.

[37] "Bilingual Danger," *New York Times*, 22 November 1976, (Editorial).

[38] Herbert Teitelbaum, "Bilingual Education Here," *New York Times*, 26 May 1975.

[39] Monte Rivera, "The Weaknesses of Bilingual Education: A Bilingual Education Won't Even Get You a Seat on the Unemployment Line," *Latin New Yorker*, October 1976, pp. 30-31.

[40] U.S. Congress, H.R. 7571 (1977).

[41] Ibid.

[42] Ibid.

[43] A. Castaneda, "Persisting Ideologies of Assimilation in America: Implications for Psychology and Education," *ATISBOS: Journal of Chicano Research*, Summer 1975, pp. 79-91.

[44] "The Bilingual Battle: Should Washington Finance Ethnic Identities," *Washington Post*, 5 June 1977, c4.

[45] A perceived departure from the original May 15th memorandum and the *Lau* Remedies (discussed in Chapters I and II) resulted when HEW issued a memorandum regarding the *Lau* Remedies, specifying that they were only guidelines and not the exclusive remedies. What resulted were articles such as "Bilingual Pupil Aid Clarified: 2 Language Education Not Required," *Washington Post*, 19 April 1976, p. 24.

[46] The memorandum in question was: Lloyd R. Henderson, Director, Elementary and Secondary Education Division, HEW, to Directors, Office of Civil Rights Regions I-X, Elementary and Secondary Education Branch Chiefs, Regions I-X, Subject: Application of *Lau* Remedies, Washington, D.C., 8 April 1976.

[47] Epstein, *Language, Ethnicity, and the Schools*, p. 1.

[48] American Institutes for Research, *Interim Report: Evaluation of the Impact of ESEA Title VII Spanish/English Bilingual Education Programs* (Palo Alto, Calif.: American Institutes for Research, 1977).

[49] Cardenas, "Response I," in *Language, Ethnicity, and the Schools* by Noel Epstein. Cardenas also cites a study conducted by the Intercultural Research Association.

APPENDIX A
LANGUAGE ABILITY SURVEY: 1972

Table 17

LANGUAGE ABILITY SURVEY OF PUPILS IN NEW YORK CITY PUBLIC SCHOOLS
(BY DISTRICTS) AS OF OCTOBER 31, 1972

School District		Total Register Enrollment	Pupils With No English Language Difficulty* (Total)	Pupils With English Language Difficulty† (Total)	Pupils With English Language Difficulty Group Breakdown by Language Spoken						
					English	Spanish	Chinese	Italian	Greek	French	Other‡
1	No	17,079	11,549	5,530	247	4,783	409	10	15	1	65
	%	100.0	67.6	32.4	1.4	28.0	2.4	0.1	0.1	0.0	0.4
2	No	22,160	17,231	4,929	318	2,547	1,798	16	41	18	191
	%	100.0	77.8	22.2	1.4	11.4	8.1	0.1	0.2	0.1	0.9
3	No	20,135	16,543	3,592	348	2,920	92	6	9	156	61
	%	100.0	82.2	17.8	1.7	14.5	0.5	0.0	0.0	0.8	0.3
4	No	17,582	13,174	4,408	470	3,901	26	8	0	0	3
	%	100.0	75.0	25.0	2.7	22.2	0.1	0.0	0.0	0.0	0.0
5	No	21,275	18,913	2,362	1,379	920	14	0	1	17	31
	%	100.0	88.9	11.1	6.5	4.3	0.1	0.0	0.0	0.1	0.1
6	No	18,659	13,150	5,509	309	4,829	63	6	177	52	73
	%	100.0	70.5	29.5	1.7	25.9	0.3	0.0	0.9	0.3	0.4
7	No	28,076	19,980	8,096	738	7,332	7	7	2	4	6
	%	100.0	71.2	28.8	2.6	26.2	0.0	0.0	0.0	0.0	0.0
8	No	32,737	27,949	4,788	390	4,294	13	68	3	3	17
	%	100.0	85.4	14.6	1.2	13.1	0.0	0.2	0.0	0.0	0.1
9	No	37,179	30,827	6,352	1,160	5,004	60	3	10	19	96
	%	100.0	82.9	17.1	3.1	13.5	0.2	0.0	0.0	0.1	0.2
10	No	28,598	23,756	4,842	681	3,210	147	272	53	32	447
	%	100.0	83.1	16.9	2.4	11.2	0.5	0.9	0.2	0.1	1.6
11	No	27,963	26,176	1,787	515	960	34	202	12	15	49
	%	100.0	93.6	6.4	1.8	3	0.1	0.7	0.0	0.1	0.2
12	No	32,116	24,172	7,944	897	7,014	10	13	1	1	8
	%	100.0	75.3	24.7	2.8	21.9	0.0	0.0	0.0	0.0	0.0
13	No	23,920	21,005	2,915	817	1,926	14	1	2	135	20
	%	100.0	87.8	12.2	3.4	8.1	0.0	0.0	0.0	0.6	0.1
14	No	27,801	19,010	8,791	605	7,993	72	63	12	4	42
	%	100.0	68.4	31.6	2.2	28.7	0.3	0.2	0.0	0.0	0.2
15	No	25,750	20,163	5,587	703	4,425	85	218	18	55	83
	%	100.0	78.3	21.7	2.7	17.2	0.3	0.9	0.1	0.2	0.3
16§	No	20,121	18,349	1,662	718	928	0	1	0	10	5
	%	100.0	91.7	8.3	3.6	4.6	0.0	0.0	0.0	0.1	0.0
17	No	25,647	23,150	2,497	679	975	118	3	14	615	93
	%	100.0	90.3	9.7	2.6	3.8	0.5	0.0	0.1	2.4	0.3
18	No	20,450	19,276	1,174	389	341	28	71	1	334	10
	%	100.0	94.3	5.7	1.9	1.7	0.1	0.3	0.0	1.6	0.1
19§	No	30,664	26,008	4,654	833	3,615	21	72	4	95	16
	%	100.0	84.8	15.2	2.7	11.8	0.1	0.2	0.0	0.3	0.1
20	No	27,054	24,519	2,535	245	1,369	143	517	137	17	107
	%	100.0	90.6	9.4	0.9	5.1	0.5	1.9	0.5	0.1	0.4

Table 17 – Continued

School District		Total Register Enrollment	Pupils With No English Language Difficulty* (Total)	Pupils With English Language Difficulty† (Total)	Pupils With English Language Difficulty: Group Breakdown by Language Spoken						
					English	Spanish	Chinese	Italian	Greek	French	Other‡
21	No	26,914	24,997	1,917	229	1,151	82	320	33	7	95
	%	100.0	92.9	7.1	0.8	4.3	0.3	1.2	0.1	0.0	0.4
22	No	26,849	26,097	752	116	297	117	49	22	76	75
	%	100.0	97.2	2.8	0.4	1.1	0.4	0.2	0.1	0.3	0.3
23	No	21,815	19,608	2,207	838	1,342	3	1	0	18	5
	%	100.0	89.9	10.1	3.8	6.2	0.0	0.0	0.0	0.1	0.0
24	No	24,008	20,198	3,810	224	2,550	196	223	84	77	456
	%	100.0	84.1	15.9	0.9	10.6	0.8	0.9	0.4	0.3	1.9
25	No	25,717	24,401	1,316	146	542	113	85	58	26	346
	%	100.0	94.9	5.1	0.6	2.2	0.4	0.3	0.2	0.1	1.3
26	No	19,238	18,922	316	122	76	22	22	22	7	45
	%	100.0	98.4	1.6	0.6	0.4	0.1	0.1	0.1	0.0	0.2
27	No	29,397	28,407	990	271	537	13	127	7	9	26
	%	100.0	96.6	3.4	1.0	1.8	0.1	0.4	0.0	0.0	0.1
28	No	26,481	24,743	1,738	271	903	115	29	67	43	310
	%	100.0	93.4	6.6	1.0	3.4	0.4	0.1	0.3	0.2	1.2
29	No	26,026	24,888	1,138	331	452	28	29	17	237	44
	%	100.0	95.6	4.4	1.3	1.7	0.1	0.1	0.1	0.9	0.2
30	No	23,888	19,980	3,980	423	1,866	197	417	720	35	322
	%	100.0	83.3	16.7	1.8	7.8	0.8	1.8	3.0	0.1	1.4
31	No	39,081	38,329	752	163	364	28	66	11	9	111
	%	100.0	98.1	1.9	0.4	0.9	0.1	0.2	0.0	0.0	0.3
32§	No	21,576	15,653	5,923	575	4,811	25	371	5	72	64
	%	100.0	72.6	27.4	2.7	22.3	0.1	1.7	0.0	0.3	0.3
Special Schools (75)	No	8,974	7,219	1,755	531	1,184	11	9	6	10	4
	%	100.0	80.4	19.6	5.9	13.2	0.1	0.1	0.1	0.1	0.1
High Schools (78)	No	303,212	276,358	26,854	6,877	15,510	1,127	737	320	1,575	708
	%	100.0	91.1	8.9	2.3	5.1	0.4	0.2	0.1	0.5	0.2
Special Schools For Multi-Handicapped (81)	No	187									
	%	100.0	77.5	22.5	17.5	3.7	0.5	0.0	0.5	0.0	0.5
Special Schools for Pregnant Girls (91,92,93 & 94)	No	667	609	58	28	28	1	0	0	0	1
	%	100.0	91.3	8.7	4.2	4.2	0.1	0.0	0.0	0.0	0.0
CITY WIDE TOTALS	No	1,128,996	985,492	143,504	23,618	100,906	5,223	4,052	1,[illegible]85	3,784	4,036
	%	100.0	87.3	12.7	2.1	8.9	0.5	0.4	0.2	0.3	0.3

Source: Board of Education of the City of New York, Bureau of Educational Program Research and Statistics LANGUAGE SURVEY AS OF OCTOBER 31, 1972 (computer layouts).

*Includes Pupils Classified in Category 3, i.e., pupils with no language difficulty.

†Includes Pupils Classified in Category 1, i.e., pupils with moderate language difficulty and Category 2, i.e., pupils with severe language difficulty.

‡Includes Pupils Classified as Puerto Ricans plus Non-Puerto Rican Spanish-Speaking.

§Figures adjusted to reflect the modification of Community School Districts 16 and 19 for the establishment of the new Community School District 32.

APPENDIX B
CONSENT DECREE PROGRAM IMPLEMENTATION: 1975

Table 18

CONSENT DECREE PROGRAM
ELIGIBLE STUDENTS, ABSENTEES, & PERSONNEL AS OF JUNE 1975

District	Elementary School	Junior High School	Eligible Students 6/75	Absentees	Estimated Absentees Eligible	Total of (Estimated) Students Eligible	Bilingual Teachers	ESL Teachers
1	16	4	2,405	1,909	771	3,174	69	6
2	19	3	1,055	362	183	1,238	2	1
3	19	4	2,226	1,038	510	2,746	71	5
4	18	4	2,712	832	709	3,116	N.A.*	N.A.
5	20	5	501	232	215	716	N.A.	N.A.
6	11	3	3,597	999	519	4,116	71	1
7	19	7	3,927	2,844	1,446	5,373	88	N.A.
8	20	8	2,023	N.A.	N.A.	N.A.	48	2
9	22	6	3,109	1,719†	821†	3,828	N.A.	N.A.
10	19	7	2,761	2,036	1,225	3,986	N.A.	N.A.
11	20	7	483	584	234	699	N.A.	N.A.
12	22	7	3,252	N.A.	N.A.	N.A.	N.A.	N.A.
13	17	4	1,049	N.A.	N.A.	N.A.	41	5
14	21	6	3,444	2,585	1,329	4,773	72	0
15	20	5	2,393	2,171	1,139	3,432	17	9
16	14	2	452	485	227	533	9	0
17	13	4	1,015	710	357	1,372	N.A.	N.A.
18	13	5	235	135	75	297	N.A.	N.A.
19	21	6	2,548	2,091	936	3,489	N.A.	N.A.
20	22	6	302	1,002	509	811	19	9
21	24	6	670	1,022	468	1,136	7	5
22	22	5	248	107	50	289	2	2
23	18	4	1,189	N.A.	N.A.	N.A.	59	0
24	18	5	2,215	834	353	2,077	33	25
25	21	7	455	80	42	487	1	3
26	24	5	64	5	1	5	0	0
27	29	5	880	N.A.	N.A.	N.A.	15	0
28	22	6	983	437	242	1,225	13	1
29	23	5	505	N.A.	N.A.	N.A.	6	3
30	20	5	1,109	N.A.	N.A.	N.A.	4	2
31	40	6	368	N.A.	N.A.	N.A.	3	1
32	12	3	3,042	N.A.	N.A.	N.A.	43	2
Totals	639	165	51,207	22,500	11,540	48,918	728	79

Source: *Aspira of New York, Inc., et al. v. Board of Education of the City of New York, et al.*, 72 Civ 4002 (MEF), Plaintiffs' Tables Respecting Defendants' August 26, 1975 Submission.

*Information not available.

†No information on junior high schools.

APPENDIX C
CONSENT DECREE PROGRAM IMPLEMENTATION: 1976

Table 19

PUPIL/TEACHER DATA FOR CONSENT DECREE ENTITLED STUDENTS AS OF FEBRUARY 1976

District	Eligible Students (Balance)	Students Participating in the Program		Teachers Bilingual and ESL (Tax Levy)	Pupil-Teacher ESL Ratio	Students Not Participating in the Program	Total Pupil-Teacher Ratio
		All	Some				
1	1,293	380	622	45	22.25 to 1	291	28.7 to 1
2	942	51	471	10	52.2 to 1	420	94.2 to 1
3	2,173	865	1,111	86	23 to 1	197	25.3 to 1
4	3,095	346	1,743	65	32 to 1	1,006	47.6 to 1
5	654	79	161	11	22 to 1	414	59 to 1
6	4,930	2,715	1,442	106	39.2 to 1	773	46.5 to 1
7	4,580	280	2,872	129	24.4 to 1	1,447	35.7 to 1
8	2,092	603	1,016	83	19.5 to 1	447	24.9 to 1
9	4,776	4,247	128	178	24.6 to 1	401	26.8 to 1
10	2,253	396	942	54	24.8 to 1	913	30.4 to 1
11	313	26	16	4	10.5 to 1	271	28.5 to 1
12	4,181	554	2,776	124	26.9 to 1	851	33.7 to 1
13	1,249	739	341	38	28.4 to 1	169	32 to 1
14	2,188	1,783	24	70	25.8 to 1	381	31.3 to 1
15	2,224	1,524	604	54	39.4 to 1	96	41.2 to 1
16	338	30	303	36	9 to 1	5	9.4 to 1
17	889	762	121	37	21 to 1	6	24 to 1
18	272	59	201	3	86.7 to 1	12	90.7 to 1
19	2,221	1,400	444	16	115 to 1	377	138.8 to 1
20	1,242	918	235	38	30.3 to 1	89	32.6 to 1
21	842	102	198	21	14.3 to 1	542	40.1 to 1
22	121	112	0	6	17 to 1	9	20 to 1
23	1,237	545	315	33	26.1 to 1	377	37.5 to 1
24	1,933	1,279	339	74.0	65.5 to 1	316	30 to 1
25	370	0	120	12.2	10 to 1	250	30 to 1
26	63	0	63	1	63 to 1	0	63 to 1
27	743	0	687	5.5	114.5 to 1	56	135.1 to 1
28	893	127	835	16	99 to 1	58	56 to 1
29	242	0	75	10	9.4 to 1	167	24.2 to 1
30*							
31	291	0	206	5	41.2 to 1	85	58.2 to 1
32	2,950	2,507	254	79	35.1 to 1	189	37.3 to 1
Totals	51,590	22,429	18,665	1,449.7	28.4 to 1	10,615	35.6 to 1†

Source: Office of Bilingual Education, 66 Court Street, Brooklyn, N.Y. 11201.

*Information not available.

†Average pupil-teacher ratio city-wide

Table 20

SUMMARY BY DISTRICT OF CONSENT DECREE SCHOOL AND PUPIL DATA REPORTS
POPULATION, TESTING, AND ELIGIBLE PUPILS — OCTOBER 1976

POPULATION					TESTING*					ELIGIBLE PUPILS	
						Not tested					
District	No. of Schools Reporting	Total Population	Total Hispanic Population	% Hispanic Total Population	Tested	No.	%	No. of Schools with 10% Not Tested	Schools with Questionable† Compliance	Total	% Tested
1	18	13,436	9,817	73	5,425	493	5	7	9	1,328	24
2	11	7,547	2,474	32	962	1,512	61	9	6	287	29
3	13	10,993	4,041	37	3,042	390	10	6	5	1,576	52
4	20	15,365	9,097	59	6,046	3,051	33	16	11	2,200	35
5	19	14,422	2,166	15	1,283	883	40	12	5	679	52
6	14	19,502	12,123	62	10,555	1,568	12	13	3	5,183	48
7	20	18,314	8,613	62	8,548	2,661	20	4	17	3,852	45
8	23	19,512	10,731	44	5,189	2,214	31	10	9	1,322	25
9	33	50,370	17,957	36	10,672	7,285	41	18	17	5,442	51
10	29	31,530	14,181	45	10,837	3,344	27	19	19	3,141	29
11	30	23,697	4,495	19	3,901	594	13	13	13	239	6
12	25	19,898	11,554	58	9,023	2,266	20	16	11	3,079	34
13	22	20,505	3,717	18	2,106	1,601	43	14	14	1,374	65
14	26	22,548	14,768	65	5,610	1,569	11	7	11	2,255	40
15	24	23,781	11,729	49	5,463	1,058	9	8	10	2,186	40
16	7	7,826	1,567	20	713	857	55	5	4	542	76
17	18	26,445	3,118	12	2,778	359	11.5	12	11	942	34
18	19	19,841	1,359	7	1,147	212	15.5	6	11	232	20
19	23	23,543	8,256	35	6,188	1,510	18	19	13	1,983	32
20	17	14,900	1,918	13	1,506	388	20	13	10	316	21
21	30	13,820	1,400	11	2,175	192	14	17	27	599	30
22	24	25,530	1,713	7	719	17	1	0	6	261	36
23	19	17,782	2,678	15	1,628	812	30	18	8	1,096	67
24	22	13,593	4,750	35	3,010	1,841	38	12	9	1,952	65
25	29	23,311	1,901	8	1,695	23	1	1	17	391	23
26	26	15,405	352	2	204	107	30	17	20	13	6
27	31	27,089	3,362	12	2,338	615	18	13	7	817	35
28	23	17,800	3,178	18	1,928	1,256	39	13	14	759	39
29‡											
30	24	24,392	5,290	22	2,858	1,007	19	18	8	923	32
31	42	27,734	1,525	5	1,103	173	11	17	17	184	17
32	9	9,520	5,517	58	3,629	1,833	33	5	6	1,616	45
Total§	692	619,063	185,347	30	122,281	42,300	23	347	351	46,747	38

Source: Aspira of New York, based on Board of Education, Individual Consent Decree School Data and District Summary Reports, New York, October 1976. Made available by Aspira of New York, Inc.

*Note that students tested plus students not tested should have equaled the total Hispanic population in the individual school or district. However, in many cases there is a discrepancy in this respect with regard to individual schools which is reflected here in the summary of district data reported.

†Schools identified as being in questionable compliance regarding the implementation of the program were judgments made by Aspira of New York based on criteria established by *Aspira v. Board of Education* for testing and eligibility.

‡As of December 1, 1976, Aspira had not received either Individual School Data Reports or District Summary Reports from District 29.

§Excluding District 29.

Table 21

SUMMARY BY DISTRICT OF CONSENT DECREE SCHOOL AND PUPIL DATA REPORTS
OPT-OUTS, ENTITLED PUPILS, ELEMENTS OF PROGRAM BEING RECEIVED,
PERSONNEL, SCHOOL DATA REPORTED, CORRECTIVE ACTION — OCTOBER 1976

	OPT-OUTS			ENTITLED		ELEMENTS OF PROGRAM RECEIVED†						PERSONNEL	SCHOOL DATA		CORRECTIVE ACTION
						All		Some		None					
District	#	% of Eligibles	# Sch. Ques. Procedures*	#	% of Hisp.	#	%	#	%	#	%	# Schls. Inadequate‡	None	Inc.	# Schls. Inadequate§
1	379	29	8	957	10	903	94	31	3	2	0.2	9			13
2	39	13	6	255	10	161	63	84	32	20	6	1	18	6	11
3	90	6	4	1,464	36	1,457	99.5	2	0.1	7	0.4	2	9		13
4	218	10	7	1,947	21	1,586	81	6	0.3	357	18	10	2	4	3
5	23	3	1	656	30	570	86	83	12	10	1.5	4	4	2	7
6	166	3	11	5,020	41	3,678	73	1,037	21	302	6	1	0	12	8
7	118	3	6	3,734	34	3,578	96	25	0.6	99	2.6	11	3	1	20
8	44	3	6	1,280	15	1,171	95	44	1	65	5	7	7	3	8
9	156	3	4	5,106	30	4,503	88	1	0	189	4	12	1	4	21
10	340	11	13	2,801	19	2,767	99	17	6	11	3	3	0	3	25
11	186	78	19	53	1	35	66	198	83	5	2	4	1	12	6
12	358	12	17	2,721	24	2,533	93	128	5	60	2		1		
13	40	3	7	1,339	36	1,084	81	108	8	94	7	1	0	1	8
14	272	12	12	1,983	13	1,828	92	9	0.4	129	6				
15	208	9.5	6	1,988	17	1,470	74	453	23	45	2	5	1	4	3
16	2	3	0	540	34	390	72	150	28	0	0	5	9	0	5
17	133	14	1	837	27	764	91	73	9	3	0.3	4	0	5	1
18	123	53	8	109	8	109	100	0	0	0	0	1	0	0	
19	238	12	7	1,807	22	1,654	91	239	13	21	1	4	5	11	5
20	25	8	6	291	15	247	85	28	10	16	5	3	13	0	0
21	140	23	9	462	33	220	48	22	5	239	52	0	0	1	
22	145	50	17	116	7	72	62	0	0	44	38	3	0	1	
23	138	12	4	622	23	877	88	35	8	41	6	5	4	2	6
24	212	11	6	1,940	41	1,595	82	178	9	56	3	2	7	6	22
25	35	9	5	352	19	107	33	222	63	27	8	21		1	8
26	10	78	3	5	1	0	0	5	100	0	0	0		16	5
27	9	1.1	1	800	24	303	38	398	50	95	12		2	10	
28	48	6	4	711	22	294	41	252	35	165	23	4	5	4	11
29															
30	459	49	8	455	9	388	85	8	2	57	13		1		
31	1	0.5	2	174	11	76	44	40	23	36	21		5	1	
32	72	4	3	1,520	20	1,240	81	157	10	0	0	4	7	4	
Totals	4,427	9.4	217	42,047	23	35,660	85	4,033	9.5	2,195	5	126	110	114	209

Source: Aspira of New York, based on Board of Education, Individual Consent Decree School Data and District Summary Reports, New York, October 1976.

*Procedures were questioned on the basis of criteria in *Aspira*.

†Three elements were required.

‡Number of schools with inadequate personnel were identified on the basis of a ratio of 32 children per bilingual personnel.

§Number of schools with inadequate corrective action were identified on the basis of each school's statement (and in many cases non-statement) of proposed action to be taken. A statement which suggested that no action was to be taken or failure to make a statement met Aspira's criteria for inclusion in this group.

Table 22

SUMMARY OF EXTENT OF STUDENT PARTICIPATION
IN THE CONSENT DECREE PROGRAM BY DISTRICT/DIVISIONS—NOVEMBER 11, 1976

1 District/Division	2 No. of Eligible Students	3 No. of Students Withdrawn	4 Balance of Eligible Students	Extent of Student Participation 5 All	6 Some	7 None
1 (18)	1,476	467 (31.6)	1,011	854 (84.5)	136 (13.5)	78 (8)
2 (10)	287	39 (13.6)	229	185 (80.8)	84 (36.7)	20 (8.7)
3 (14)	1,698	91 (5.4)	1,607	1,600 (99)	2	5
4 (20)	2,168	218 (10.1)	1,950	1,655 (85.9)	0	259 (13.3)
5 (18)	679	23 (3.4)	656	570 (86.9)	76 (11.6)	10 (1.5)
6 (14)	5,183	166 (3.2)	5,017	3,678 (73.4)	1,037 (20.6)	302 (6.0)
7 (12)	1,792	49 (2.7)	1,743	1,355 (77.7)	329 (18.9)	58 (3.3)
8 (18)	1,288	44 (3.4)	1,229	1,135 (92.4)	49 (4)	66 (5.4)
9 (33)	5,442	156 (2.8)	5,286	5,053 (95.4)	0 (0)	233 (4.5)
10 (29)	3,165	365 (11.5)	2,800	2,767 (98)	23 (2)	10 (.01)
11 (33)	180	140 (76.1)	40	21 (52.5)	19 (47.5)	0
12 (25)	3,203	384 (12.0)	2,893	2,705 (93.5)	128 (4.4)	60 (2.1)
13 (21)	910	30 (3.3)	880	756 (85.9)	121 (13.8)	25 (28.4)
14 (26)	2,255	272 (12.1)	1,983	1,828 (.92)	9 (.4)	146 (7)
15 (25)	2,194	314 (14.3)	1,929	1,470 (76)	459 (24)	0 (0)
16 (7)	542	2 (0.4)	540	390 (72)	150 (27)	0 (0)
17 (19)	973	150 (15.4)	823	776 (94.3)	44 (5.3)	3 (.4)
18 (19)	151	60 (39.7)	91	91 (100)	0	0
19 (27)	2,224	194 (9)	2,030	1,842 (91)	173 (8)	15 (1)
20 (13)	316	25 (7.9)	291	247 (84.8)	29 (9.9)	18 (6.1)
21 (29)	602	140 (23)	462	342 (74)	2 (.5)	118 (25.5)
22 (26)	261	145 (55.6)	116	116 (100)	0	0 (0)
23 (20)	1,096	97 (8.9)	999	877 (88)	35 (4)	4 (4)
24 (23)	241	61 (25)	180	162 (90)	16 (9)	2 (1)
25 (29)	394	39 (11.6)	355	106 (30)	222 (63)	27 (8)
26 (27)	7	2 (28.6)	5	0 (0)	5 (100)	0 (0)
27 (35)	832	16 (2)	816	207 (25)	495 (61)	100 (12)
28 (28)	757	48 (6.3)	709	291 (41)	244 (34)	181 (26)
29 (17)	122	19 (1.6)	93	92 (100)	0	0
30 (25)	944	476 (50.4)	464	399 (86)	8 (1.7)	57 (12.3)
31 (37)	183	0	183	107 (58)	52 (28)	24 (13)
32 *						
District Total (687)	41,565	4,232 (11.3)	37,410	31,677 (85)	3,927 (11)	1,821 (5)
Division of High School						
Bronx	1,969	263 (13.4)	1,706	1,306 (76.6)	631 (37)	103 (6)
Queens	1,046	64 (6.1)	982	772 (78.6)	195 (19.9)	63 (6.4)
Brooklyn	990	86 (8.7)	904	678 (75)	236 (26.1)	19 (2.1)
Manhattan	2,316	313 (13.5)	2,003	1,692 (84.5)	600 (30)	33 (1.6)
SI/Brooklyn	1,465	390 (26.6)	1,075	966 (89.9)	214 (19.9)	10 (.9)
Division Total	7,786	1,116 (14)	6,670	5,414 (81)	1,876 (28)	228 (3)
City Total	49,351	5,348 (11.3)	44,080	37,391 (85)	5,823 (13)	2,049 (5)

Source: Board of Education, Compliance Report on the Consent Decree Program Required by *Aspira* v. *Board of Education*, 72 Civ. 4002 (S.D.N.Y.), November-December 1976, Attachment H.

*Data not included.

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ABSTRACT

ASPIRA v. *BOARD OF EDUCATION OF THE CITY OF NEW YORK*: A HISTORY AND POLICY ANALYSIS

Isaura Santiago Santiago, Ph.D.
Fordham University, 1978
Mentor: John B. Poster, Ph.D.

This study concerned *Aspira* v. *Board of Education of the City of New York*. The suit was brought by Aspira, a Puerto Rican community agency, and a class of children of limited English-speaking ability against the public educational system of New York City. It claimed that the policies and practices of the Board of Education in educating children of limited English-speaking ability deprived these children of their rights to equal educational opportunity. Aspira claimed that only a bilingual-bicultural instructional program would provide these children equal access to educational materials and experiences and sought to obtain policy reform through litigation.

This study was conducted in three parts. Documentation was based on educational literature, interviews, litigation and court documents, and the private files of many individuals and groups. The study first analyzed policies and practices in educating children of limited or no English-speaking ability on city, state, and federal levels in the years preceding the filing of the suit. The investigation then reconstructed the history of the suit. Policy issues were raised within the context of the suit's litigation and conflicting policy positions taken by litigants, experts, interest groups, and the court were identified, documented, and discussed.

Finally, the study analyzed the impact on policy of the consent decree which was the outcome of the suit. The process and substance of policy reform and policy accommodation in five areas were described and analyzed: minimum educational standards, parental rights, assessment, personnel, and finance.

The investigation concluded that: (1) As a result of *Aspira* v. *Board of Education*, by the spring of 1976 a broad-based bilingual instructional program was in operation in New York City public schools, serving approximately 48,000 pupils and involving approximately 1,500 bilingual personnel; (2) Prior to the *Aspira* suit there were many factors on city, state, and federal levels which, in effect, laid the necessary groundwork for the consented agreement on behalf of language-minority plaintiffs; (3) Litigation brought by a Hispanic minority group, with the goal of changing existing educational policies, was an effective policy change mechanism for a portion of the class of children it purported to represent; (4) Carrying out the litigation, consultation, and negotiation required by the suit required an investment of substantial, sustained, and long-term efforts on the part of both parties for more than a four-year period; (5) The consent agreement resulted in policy reform and accommodation in areas including minimum educational standards, parental rights, assessment, personnel, and finance; had the consent decree incorporated more specific policy statements, its implementation might have been expedited; (7) Contempt proceedings and judicial review were effective in substantially increasing the extent of the Board's compliance with the consented agreement.